



EXHIBIT 8



CLERK OF THE COURT

1 HARRIET H. ROLAND, ESQ.
2 NV Bar No. 5471
3 **ROLAND LAW FIRM**
4 2470 E. St. Rose Pkwy, Ste. 105
5 Henderson, NV 89074
6 Telephone: (702) 452-1500
Facsimile: (702) 920-8903
hroland@rolandlawfirm.com

7 ANTHONY L. BARNEY, ESQ.
8 Nevada Bar No. 8366
9 TIFFANY S. BARNEY, ESQ.
Nevada Bar No. 9754
10 **ANTHONY L. BARNEY, LTD.**
11 3317 W. Charleston Blvd., Suite B
Las Vegas, NV 89102
12 Telephone: (702) 438-7878
Facsimile: (702) 259-1116
Attorneys for Christopher D. Davis

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

15
16 In the matter of:

17 The BEATRICE B. DAVIS FAMILY HERITAGE
18 TRUST, dated July 28, 2000, as amended on
19 February 24, 2014.

Case No.: P-15-083867-T

Dept. No.: 26

Hearing Date: April 22, 2015

Hearing Time: 9:00 a.m.

22 **ORDER**

23 This matter came before the Court for hearing on the 22nd day of April, 2015 at 9:00
24 a.m., upon the Christopher D. Davis's Motion to Dismiss Pursuant to NRCP 12(b) and NRCP
25 19 and Caroline Davis's Petition to Assume Jurisdiction over the Beatrice B. Davis Family
26 Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014, to Assume Jurisdiction
27 over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution
28

1 Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for Immediate
2 Disclosure of Documents and Information from Christopher D. Davis. Christopher D. Davis
3 was represented by Harriet Roland, Esq. of the Roland Law Firm and Anthony L. Barney, Esq.,
4 of the law office of Anthony L. Barney, Ltd., Caroline Davis was represented by Mark
5 Solomon, Esq., of the law firm of Solomon Dwiggin and Freer, Ltd.; Stephen K. Lehnardt was
6 represented by Jonathan W. Barlow, Esq. of the law office of Clear Counsel Law Group; and
7 Dunham Trust Company was represented by Charlene N. Renwick, Esq., of the law office of
8 Lee Hernandez Landrum & Garofalo. After reviewing the pleadings on file and in the court
9 record, hearing oral arguments by both parties in this matter, being fully advised in the
10 premises, and for good cause appearing, the Court hereby finds and orders the following:

13 IT IS FOUND that since the first amendment, Christopher has been directing the trust in
14 Nevada, and that everyone involved relied on this amendment as being proper.

16 IT IS FURTHER FOUND that the Court has no affidavit that another beneficiary existed
17 at the time the first amendment was signed.

18 IT IS FURTHER FOUND that the Court has jurisdiction as a constructive trust because
19 action on behalf of the trust has been taken in Nevada.

20 IT IS SO FOUND.

22 WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
23 Petition to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor is
24 granted without prejudice.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
26 Assume Jurisdiction over Stephen K. Lehnardt as Distribution Trust Advisor is denied until a
27 more definite statement is filed.
28

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
2 Confirm Dunham Trust Company as Directed Trustee is granted.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for
4 Immediate Disclosure of Documents and Information from Christopher D. Davis is granted as to
5 all information in his possession ^{custody or control} in his role as Investment Trust Advisor, and on his

6 ^{role as manager of FHY Holdings}
7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Christopher D.
8 Davis's Motion to Dismiss is denied.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon agreement of
10 all parties, this Court will retain jurisdiction and all matters will be heard by the probate judge.
11

12 IT IS SO ORDERED, ADJUDGED AND DECREED.

13 DATED this 19th day of May, 2015.
14

15 
16 DISTRICT COURT JUDGE

17
18 Respectfully Submitted by the Following:


Approved as to Form and Content:

19 
20
21 HARRIET H. ROLAND, ESQ.
22 NV Bar No. 5471
23 ROLAND LAW FIRM
24 2470 E. St. Rose Pkwy, Ste. 105
25 Henderson, NV 89074
26 Telephone: (702) 452-1500
27 Facsimile: (702) 920-8903
28 Attorney for Christopher D. Davis


JONATHAN W. BARLOW, ESQ.
NV Bar No. 9964
CLEAR COUNSEL LAW GROUP
50 South Stephanie Street, Ste. 101
Henderson, Nevada 89012
Telephone: (702) 476-5900
Facsimile: (702) 924-0709
Attorney for Stephen K. Lehnardt

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Approved as to Form and Content:



ANTHONY L. BARNEY, ESQ.
Nevada Bar No. 8366
TIFFANY S. BARNEY, ESQ.
Nevada Bar No. 9754
ANTHONY L. BARNEY, LTD.
3317 W. Charleston Blvd., Suite B
Las Vegas, NV 89102
Telephone: (702) 438-7878
Facsimile: (702) 259-1116
Attorneys for Christopher D. Davis

CHARLENE RENWICK, ESQ.
LEE, HERNANDEZ, LANDRUM,
GARFOFALO, ATTORNEYS AT LAW
7575 Vegas Drive, Suite 150
Las Vegas, Nevada 89128
Telephone: (702) 880-9750
Facsimile: (702) 314-1210
Attorneys for Dunham Trust Company

Approved as to Form and Content:

MARK A. SOLOMON, ESQ.
NV Bar No. 0418
JOSHUA M. HOOD, ESQ.
NV Bar No. 12777
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485
Attorneys for Caroline D. Davis



EXHIBIT 9



CLERK OF THE COURT

NOTC

HARRIET H. ROLAND, ESQ.
Nevada Bar No. 5471
ROLAND LAW FIRM
2470 E. Saint Rose Pkwy., Suite #105
Henderson, Nevada 89074
Telephone: (702) 452-1500
Facsimile: (702) 920-8903
Email: hroland@rolandlawfirm.com
Attorney for Christopher D. Davis

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of

The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014.


Case No.: P-15-083867
Dept. No.: Probate (26)

NOTICE OF ENTRY OF ORDER

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the *Order* was entered
by the Court on June 24, 2015 in the above-entitled matter, a copy of which is attached hereto.

DATED this 1st day of July, 2015.

ROLAND LAW FIRM


HARRIET H. ROLAND, ESQ.
Nevada Bar No. 5471
Attorney for Christopher D. Davis



CLERK OF THE COURT

HARRIET H. ROLAND, ESQ.
NV Bar No. 5471

ROLAND LAW FIRM
2470 E. St. Rose Pkwy, Ste. 105
Henderson, NV 89074
Telephone: (702) 452-1500
Facsimile: (702) 920-8903
hroland@rolandlawfirm.com

ANTHONY L. BARNEY, ESQ.
Nevada Bar No. 8366

TIFFANY S. BARNEY, ESQ.
Nevada Bar No. 9754

ANTHONY L. BARNEY, LTD.
3317 W. Charleston Blvd., Suite B
Las Vegas, NV 89102
Telephone: (702) 438-7878
Facsimile: (702) 259-1116
Attorneys for Christopher D. Davis

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In the matter of:

The BEATRICE B. DAVIS FAMILY HERITAGE
TRUST, dated July 28, 2000, as amended on
February 24, 2014.

Case No.: P-15-083867-T

Dept. No.: 26

Hearing Date: April 22, 2015

Hearing Time: 9:00 a.m.

ORDER

This matter came before the Court for hearing on the 22nd day of April, 2015 at 9:00 a.m., upon the Christopher D. Davis's Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19 and Caroline Davis's Petition to Assume Jurisdiction over the Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014, to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution

1 Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for Immediate
2 Disclosure of Documents and Information from Christopher D. Davis. Christopher D. Davis
3 was represented by Harriet Roland, Esq. of the Roland Law Firm and Anthony L. Barney, Esq.,
4 of the law office of Anthony L. Barney, Ltd., Caroline Davis was represented by Mark
5 Solomon, Esq., of the law firm of Solomon Dwiggin and Freer, Ltd.; Stephen K. Lehnardt was
6 represented by Jonathan W. Barlow, Esq. of the law office of Clear Counsel Law Group; and
7 Dunham Trust Company was represented by Charlene N. Renwick, Esq., of the law office of
8 Lee Hernandez Landrum & Garofalo. After reviewing the pleadings on file and in the court
9 record, hearing oral arguments by both parties in this matter, being fully advised in the
10 premises, and for good cause appearing, the Court hereby finds and orders the following:

11
12
13 IT IS FOUND that since the first amendment, Christopher has been directing the trust in
14 Nevada, and that everyone involved relied on this amendment as being proper.

15
16 IT IS FURTHER FOUND that the Court has no affidavit that another beneficiary existed
17 at the time the first amendment was signed.

18
19 IT IS FURTHER FOUND that the Court has jurisdiction as a constructive trust because
20 action on behalf of the trust has been taken in Nevada.

21
22 IT IS SO FOUND.

23 WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
24 Petition to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor is
25 granted without prejudice.

26
27 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
28 Assume Jurisdiction over Stephen K. Lehnardt as Distribution Trust Advisor is denied until a
more definite statement is filed.

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
2 Confirm Dunham Trust Company as Directed Trustee is granted.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for
4 Immediate Disclosure of Documents and Information from Christopher D. Davis is granted as to
5 all information in his possession ^{Custody or control} in his role as Investment Trust Advisor, ^{and in his}
6 ^{role as manager of FHY Holdings}

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Christopher D.
8 Davis's Motion to Dismiss is denied.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon agreement of
10 all parties, this Court will retain jurisdiction and all matters will be heard by the probate judge.

11 IT IS SO ORDERED, ADJUDGED AND DECREED.

12 DATED this 18th day of May, 2015.

13
14
15
16 
DISTRICT COURT JUDGE

17
18 Respectfully Submitted by the Following:

Approved as to Form and Content:

19 
20
21 HARRIET H. ROLAND, ESQ.
22 NV Bar No. 5471
23 ROLAND LAW FIRM
24 2470 E. St. Rose Pkwy, Ste. 105
25 Henderson, NV 89074
26 Telephone: (702) 452-1500
27 Facsimile: (702) 920-8903
28 Attorney for Christopher D. Davis


JONATHAN W. BARLOW, ESQ.
NV Bar No. 9964
CLEAR COUNSEL LAW GROUP
50 South Stephanie Street, Ste. 101
Henderson, Nevada 89012
Telephone: (702) 476-5900
Facsimile: (702) 924-0709
Attorney for Stephen K. Lehnardt

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Approved as to Form and Content:



ANTHONY L. BARNEY, ESQ.
Nevada Bar No. 8366
TIFFANY S. BARNEY, ESQ.
Nevada Bar No. 9754
ANTHONY L. BARNEY, LTD.
3317 W. Charleston Blvd., Suite B
Las Vegas, NV 89102
Telephone: (702) 438-7878
Facsimile: (702) 259-1116
Attorneys for Christopher D. Davis

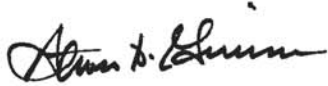
CHARLENE RENWICK, ESQ.
LEE, HERNANDEZ, LANDRUM,
GARFOFALO, ATTORNEYS AT LAW
7575 Vegas Drive, Suite 150
Las Vegas, Nevada 89128
Telephone: (702) 880-9750
Facsimile: (702) 314-1210
Attorneys for Dunham Trust Company

Approved as to Form and Content:

MARK A. SOLOMON, ESQ.
NV Bar No. 0418
JOSHUA M. HOOD, ESQ.
NV Bar No. 12777
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485
Attorneys for Caroline D. Davis



EXHIBIT 10



CLERK OF THE COURT

HARRIET H. ROLAND, ESQ.
NV Bar No. 5471
ROLAND LAW FIRM
2470 E. St. Rose Pkwy, Ste. 105
Henderson, NV 89074
Telephone: (702) 452-1500
Facsimile: (702) 920-8903
hroland@rolandlawfirm.com

ANTHONY L. BARNEY, ESQ.
Nevada Bar No. 8366
TIFFANY S. BARNEY, ESQ.
Nevada Bar No. 9754
ANTHONY L. BARNEY, LTD.
3317 W. Charleston Blvd., Suite B
Las Vegas, NV 89102
Telephone: (702) 438-7878
Facsimile: (702) 259-1116
Attorneys for Christopher D. Davis

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

In the matter of:

Case No.: P-15-083867-T

The BEATRICE B. DAVIS FAMILY HERITAGE
TRUST, dated July 28, 2000, as amended on
February 24, 2014.

Dept. No.: 26

**NOTICE OF PETITION AND PETITION FOR RECONSIDERATION OF THE
ORDER DATED MAY 19, 2015 RE: PETITION TO ASSUME JURISDICTION
OVER THE BEATRICE B. DAVIS FAMILY HERITAGE TRUST DATED JULY
28, 2000, AS AMENDED ON FEBRUARY 24, 2014, TO ASSUME
JURISDICTION OVER CHRISTOPHER D. DAVIS AS INVESTMENT TRUST
ADVISOR, STEPHEN K. LEHNARDT AS DISTRIBUTION TRUST ADVISOR,
TO CONFIRM DUNHAM TRUST COMPANY AS DIRECTED TRUSTEE, AND
FOR IMMEDIATE DISCLOSURE OF DOCUMENTS AND INFORMATION
FROM CHRISTOPHER D. DAVIS;**

1 NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS
2 MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE
3 UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10)
4 DAYS OF YOUR RECEIPT OF THIS MOTION.

5 FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE
6 COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION
7 MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE
8 COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING
9 DATE.

10 TO: Caroline Davis, through her attorneys Mark Solon, Esq. and Joshua Hood Esq. of
11 Solomon Dwiggins & Freer, Ltd.

12 TO: Dunham Trust Company, through its attorney Charlene Renwick, Esq., of the law
13 firm of Lee, Hernandez, Landrum & Garofalo,

14 TO: Stephen Lehnardt, through his attorney Jonathan Barlow, of Clear Counsel Law
15 Group.

16 PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for hearing
17 before the Honorable Judge Sturman in Dept. 26 of the Eighth Judicial District Court, located at
18 200 Lewis Avenue, Las Vegas, NV 89155, on the 19th day of August, 2015, at
19 9:00am o'clock of said day, or as soon thereafter as counsel may be heard.

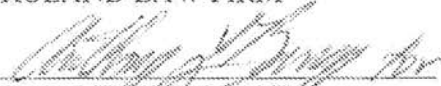
20 Christopher D. Davis, by and through his attorneys HARRIET H. ROLAND, Esq., of the
21 ROLAND LAW FIRM and ANTHONY L. BARNEY, Esq., of the law office of ANTHONY L.
22 BARNEY, LTD. hereby present their petition to reconsider this Court's order regarding
23 Caroline Davis' petition to assume jurisdiction over the Beatrice B. Davis Family Heritage
24 Trust, dated July 28, 2000, as amended on February 24, 2014, to assume jurisdiction over
25 Christopher D. Davis as Investment Trust Advisor, Stephen K. Lehnardt as Distribution Trust
26 Advisor, to confirm Dunham Trust Company as Directed Trustee, and for immediate disclosure
27 of documents and information from Christopher D. Davis. This pleading is based on the
28

1 Memorandum of Points and Authorities attached hereto, any exhibits attached hereto, and any
2 oral argument that will be heard in this matter.

3 DATED this 14th day of July, 2015

Respectfully Submitted:

ROLAND LAW FIRM


HARRIET H. ROLAND
Nevada Bar No.: 5471

4
5
6
7
8
9
10
11
12 *[remainder of page intentionally left blank]*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. FACTS PRESENTED

3 Christopher Davis hereby incorporates the Facts Presented in his Motion to Dismiss
4 Pursuant to NRCP 12(b) and NRCP 19 ("Original Motion") as if set forth fully herein. By way
5 of summary, he alleges:
6

7 Christopher's mother, Beatrice B. Davis ("Beatrice"), a life-long resident of Missouri,
8 created several trusts and did extensive, sophisticated estate planning after her husband Ilus W.
9 Davis died. Her long-time attorney was the Missouri firm of Lehnardt & Lehnardt. She created
10 the Beatrice B. Davis Revocable Trust, in Missouri, on April 4, 1990, (the Revocable Trust) and
11 the Beatrice B. Davis Family Heritage Trust (the "FHT"), in Missouri, on July 28, 2000. She
12 participated in the Davis Family Office, a Missouri limited liability company, formed on
13 November 3, 1999. None of these entities had any Nevada contacts until the purported
14 appointment of Dunham Trust Company on February 24, 2014.
15

16 Christopher Davis ("Christopher") and his wife Tarja are residents of Missouri. Caroline
17 Davis is a resident of Washington. (Caroline and Christopher serve as co-trustees of the
18 Revocable Trust which is administered under Missouri law, in Missouri.) Winfield Davis and
19 his son Ace Davis are residents of Japan, but citizens of the United States. Stephen Lehnardt, the
20 Trust Protector, is a resident of Missouri. Alaska Trust Company and its successor in interest,
21 Alaska USA Trust Company, do business in Alaska and, upon information and belief, have no
22 Nevada contacts. Among all the entities and assets, the only contact with Nevada is Dunham
23 Trust Company, ("Dunham") which is alleged to be currently acting as directed trustee of the
24 FHT. Even the Ashley Cooper insurance policy (the product of a tax-free exchange from the
25 year 2000), which is the primary asset of the trust and the subject matter of Caroline's petition,
26
27
28

1 is not administered in Nevada. It is administered under a custodian domiciled in Puerto Rico,
2 and its investment advisor is a Canadian broker-dealer.

3 Dunham created FHT Holdings, LLC, ("FHT Holdings") on March 28, 2014, and
4 transferred the insurance policy to it. Dunham is the 100% owner/member of FHT Holdings.
5 Christopher is the manager, and Dunham purportedly acts as "directed trustee" pursuant to the
6 purported First Amendment to the FHT dated February 24, 2014. Upon information and belief,
7 the directed trustee and LLC structure was put into place by Dunham in an attempt to shield
8 itself from the fiduciary liability inherent in holding large assets without diversification.
9

10 Christopher Davis, as manager of FHT Holdings, has no power over the Ashley Cooper
11 policy, or over the Puerto Rico custodian, or over the Canadian broker-dealer investment
12 adviser. Upon information and belief, the sole purpose of his appointment and the formation of
13 FHT Holdings, LLC, was to shield Dunham from fiduciary liability for its action or inaction.
14 Christopher receives no compensation or benefit in his position as manager of FHT Holdings.
15 Because FHT Holdings is solely owned by Dunham, Christopher can be removed by Dunham at
16 any time.
17

18 In the Order filed June 24, 2015, this Court found that "the Court has jurisdiction as a
19 constructive trust because action on behalf of the trust has been taken in Nevada."¹ Based on
20 this finding that jurisdiction was proper this Court assumed Jurisdiction over Christopher D.
21 Davis and granted immediate disclosure of "all information in his possession, custody and
22 control in his role as investment trust advisor and or his role as manager of FHT holdings."²
23

24 **II. LEGAL AUTHORITY AND ARGUMENT**

25
26
27 ¹ See Order, filed June 24, 2015

28 ² *Id.*

1 **A. Inherent Authority to Reconsider the Court's Prior Order**

2 A court has inherent authority to reconsider its prior orders.³ Reconsideration is also proper
3 pursuant to E.D.C.R. 2.24 which states in pertinent part:

4 (a) No motions once heard and disposed of may be renewed in the same cause, nor may the
5 same matters therein embraced be reheard, unless by leave of the court granted upon motion
6 therefor, after notice of such motion to the adverse parties.

7 (b) A party seeking reconsideration of a ruling of the court, other than any order which may
8 be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for
9 such relief within 10 days after service of written notice of the order or judgment unless the
10 time is shortened or enlarged by order....

11 (c) If a motion for rehearing is granted, the court may make a final disposition of the cause
12 without reargument or may reset it for reargument or resubmission or may make such other
13 orders as are deemed appropriate under the circumstances of the particular case.

14 A petition for reconsideration may is appropriate when there is clear error or to prevent
15 manifest injustice, and when a court overlooks controlling decisions.⁴

16 **B. Lack of Subject Matter Jurisdiction Invalidates Nevada's Jurisdiction Due To**
17 **Absence of Conditions Precedent to Change of Situs from Alaska to Nevada.**

18 The entirety of Caroline's petition and her opposition to the motion to dismiss, and her
19 request for the Nevada court to assert jurisdiction over Christopher and the Revocable Family
20 Trust, rests defectively upon the presumed validity of the change of situs of the Beatrice B.
21

22
23
24
25
26

³ *Trail v. Faretto*, 91 Nev. 401, 536 P. 2d 1026 (1975); *Murphy v. Murphy*, 64 Nev. 440 (1947).

27 ⁴ *Nunes v. Ashcroft*, 375 F.3d 810, 812 (9th Cir. 2004); See also *Official Comm. Of Unsecured Creditors v. Coopers*
28 *& Lybrand, LLP*, 332 F.3d 147 (2nd Cir. 2003).

1 Davis Family Heritage Trust dated July 28, 2000 (the "FHT") from Alaska to Nevada,
2 purportedly accomplished by the February 24, 2014 First Amendment.

3 It is important to note that the question of the validity of the change of situs is different
4 than the question of the validity of the First Amendment. Although Caroline asserts that the
5 purported First Amendment is "presumed to be valid unless proven otherwise", all the facts and
6 evidence prove the change of situs (a condition precedent to any amendment) was invalid and
7 not permitted under the terms of the FHT. The validity of the FHT (and presumably its
8 amendments) must be determined under Alaska law, by the express mandate of Article 14,
9 Section 6 of the FHT.
10
11

12 Section 6, Paragraph 1, of the FHT provides the requirements for a change of situs as:

13 Except as expressly provided herein, the situs of this agreement or any subtrust
14 established hereunder may be changed by the unanimous consent of all of the
15 beneficiaries then eligible to receive mandatory or discretionary distributions of net
16 income under this agreement or such subtrust, with the consent of any then-acting
17 Protector and the Trustee thereof, which shall be given only after Trustee has obtained
18 advice from counsel as to the tax and other consequences of a change in situs.⁵

19 The conditions precedent to the change of situs require that all of the beneficiaries then
20 eligible to receive mandatory or discretionary distributions must consent to the change of the
21 situs. In addition, both the FHT Trust Protector and Trustee must consent to the change of situs
22 after the Trustee has been able to meet with an attorney to discuss the tax and other
23 consequences of a change in situs, and after all the current income beneficiaries of the FHT have
24 consented. These conditions did not occur. Therefore the situs of the FHT remains in Alaska,
25 and jurisdiction
26
27
28

⁵ See Article 14, Section 4, Page 14-7.attached as Exhibit 1 to Caroline Davis's Original Petition (emphasis added).

1 Caroline recognizes that Tarja Davis is a discretionary beneficiary of the FHT. This is
2 immediately clear by a simple review of its terms of the FHT⁶ and by a simple review of the
3 certificate of service.⁷ Furthermore, Caroline asserts and provides written proof that Alaska
4 USA Trust Company ("Alaska USA") resigned as Trustee on December 5, 2013. The
5 resignation of Alaska USA as Trustee occurred almost three months prior to the execution of
6 the purported first amendment on February 24, 2014 and the appointment of Dunham Trust
7 Company ("Dunham") as successor Trustee.

8
9 There is no evidence that anyone or any entity assumed the office of Trustee and was in
10 authority to act and provide consent of the Trustee during the period between the resignation of
11 Alaska USA in December 2013 and the purported first amendment appointing Dunham almost
12 three months later. In contravention of the terms of the FHT, there was a purported change in
13 situs made while there was no acting Trustee to provide informed consent to the change in situs.
14 Further, it appears everyone overlooked the necessity of obtaining the consent Christopher's
15 wife, Tarja, who was and is a beneficiary entitled to discretionary distributions. Tarja did not
16 consent to the change in situs, and her signature cannot be found on any of the documents
17 purporting to achieve the change in situs to Nevada and Dunham's appointment as successor
18 trustee. Tarja was not given proper and adequate notice of the proceedings upon which this
19 Court issued its order to protect her interests or file a responsive pleading.⁸

20
21
22
23
24
25
26 ⁶ See Trust, Article Three, Section 1, Page 3-1; See also Article Eight, Section 3.d., Page 8-4, See also Article 8-
4.b.1-2, Pages 8-12 and 8-13 attached as Exhibit I to Caroline Davis' Original Petition.

27 ⁷ See Certification of Service for Opposition to Christopher D. Davis' Motion to Dismiss Pursuant to NRCP (12)(b)
and NRCP 19 dated April 13, 2015 (This corrected mail service was belatedly and deficiently made by Caroline
28 Davis after Christopher Davis filed his Motion to Dismiss alerting the parties as to the defectiveness of both the
service of process and the defective nature of the purported first amendment).

⁸ *Id.*

1 The law of Alaska, as the situs and place of administration of the FHT before the
2 attempted change of situs, and the place of residence of Alaska USA Trust Company, the then
3 Trustee, governs the validity of the First Amendment's change of situs to Nevada, the
4 appointment of Dunham, and the other terms of the First Amendment, as well as the validity of
5 the First Amendment itself.
6

7 Article 12, Section 3 of the FHT requires "Any proceedings to seek judicial instructions
8 or a judicial determination shall be initiated by my Trustee in the appropriate state court having
9 original jurisdiction of those matters relating to the construction and administration of trusts.
10 Because under the terms of the FHT, questions of validity must be determined under Alaska
11 law, and Alaska was the original jurisdiction of the FHT until the attempted change of situs, an
12 Alaska court must determine whether the change of situs and the First Amendment were valid.
13 Only then should the Nevada court take jurisdiction over the FHT, and only if jurisdiction is
14 then appropriate.
15
16

17 Alaska law allows for modification of an irrevocable trust upon consent, but only by
18 court approval. AS 13.36.360. Modification or Termination of Irrevocable Trust By Consent,
19 reads:

20 (a) Except as otherwise provided by this section, on petition by a trustee, settlor, or
21 beneficiary, a court may modify or terminate an irrevocable trust if all of the beneficiaries
22 consent and if continuation of the trust on the existing terms of the trust is not necessary to
23 further a material purpose of the trust. However, the court, in its discretion, may determine that
24 the reason for modifying or terminating the trust under the circumstances outweighs the interest
25 in accomplishing the material purposes of the trust. The inclusion of a restriction on the
26 voluntary or involuntary transfer of trust interests under AS 34.40.110 may constitute a material
27
28

1 purpose of the trust under this subsection, but is not presumed to constitute a material purpose of
2 the trust under this subsection.

3 (b) Unless otherwise provided in the trust instrument, an irrevocable trust may not be
4 modified or terminated under this section while a settlor is also a discretionary beneficiary of the
5 trust.
6

7 (c) If a beneficiary other than a qualified beneficiary does not consent to a modification
8 or termination of an irrevocable trust that is proposed by the trustee, settlor, or other
9 beneficiaries, a court may approve the proposed modification or termination if the court
10 determines
11

12 (1) if all the beneficiaries had consented, the trust could have been modified or
13 terminated under this section; and

14 (2) the rights of a beneficiary who does not consent will be adequately protected or not
15 significantly impaired.
16

17 (d) In (c) of this section, "qualified beneficiary" means a beneficiary who

18 (1) on the date the beneficiary's qualification is determined, is entitled or eligible to
19 receive a distribution of trust income or principal; or

20 (2) would be entitled to receive a distribution of trust income or principal if the event
21 causing the trust's termination occurs.
22

23 It is well settled that a trust may only be modified in accordance with its specific terms.⁹
24 Where a trust instrument requires the consent of specific parties in order for an amendment to be
25

26
27
28 ⁹ *Dallinger v. Abel*, 199 Ill. App. 3d 1057, 1059-1060 (Ill. App. Ct. 1990) citing *Parish v. Parish* (1963), 29 Ill. 2d 141, 149, 193 N.E.2d 761, 766.) (It is elementary that if the method of exercising a power of modification is described in the trust instrument, the power can be asserted only in that manner.)

1 valid, the lack of consent will invalidate a purported amendment.¹⁰ This required consent
2 demonstrates the importance of having Alaska USA Trust Company ("Alaska USA") or their
3 successor-in-interest (and predecessor trustee) Alaska Trust Company demonstrate authority and
4 consent to change the situs of the FHT from Alaska to Nevada, because unless this evidence of
5 consent is provided, the FHT situs cannot be changed. The consent of some of the beneficiaries
6 and the FHT Trust Protector was not enough to meet the strict requirements of the condition
7 precedent (i.e. change of situs) for the purported First Amendment.
8

9 Caroline has provided no evidence of any written or even oral consent of any trustee
10 authorizing the FHT's change in situs prior to Alaska USA's resignation on December 5, 2013.
11 She has not provided any evidence of Tarja having consented to the change of situs. In fact, she
12 never even provided proper statutory notice to Tarja to enable her to file even a simple affidavit
13 to protect her rights under the Trust. She has not provided any evidence of the unanimous
14 agreement of Beatrice Davis's children to appoint a successor trustee in the event the Trust
15 Protector fails to appoint a Successor Trustee within thirty (30) days after Alaska USA
16 resigned,¹¹ and even if they had, the successor trustee and Tarja would have had to consent to
17 the change of situs. Therefore, the change of situs under the purported First Amendment must be
18 presumed invalid until such evidence of an acting Trustee's consent can be produced and
19 evidence of the Trustee's and all beneficiaries' consent of the change in situs can be obtained.
20
21 Further and most importantly, such a dispute, which includes the validity of the First
22
23
24

25 ¹⁰ *Williams v. Springfield Marine Bank*, 131 Ill. App. 3d 417, 475 N.E.2d 1122 (1985) (This rule was applied where
26 the trust instrument permitted amendment by the settlors, the appellate court holding that an attempted amendment
27 by only one settlor, after the other had died, was invalid.); See also Restatement (Second) of Trusts § 331,
28 Explanatory Notes, comment e, at 144 (1959) ("If the settlor reserves a power to modify the trust only with the
consent of one or more of the beneficiaries, or of the trustee, or of a third person, he cannot modify the trust without
such consent.").

¹¹ See Trust, Article Eleven, Section 3(c), Page 11-3, attached as Exhibit 1 to Caroline Davis's Original Petition.

1 Amendment, must be brought in Alaska, as the original situs of the FHT before the purported
2 First Amendment and the attempted change of situs.

3 Christopher asserts that the change of situs is invalid because of the lack of consent of all
4 beneficiaries and the absence of action by an Alaska Trustee. The determination of the validity
5 of the purported First Amendment and the change of situs (as well as its other provisions) is a
6 condition precedent to the Nevada court taking jurisdiction over the FHT. That determination
7 must be made under Alaska law before the Nevada court can assert jurisdiction over the FHT.
8 Caroline alleges that the FHT Trust Protector validly appointed Dunham as successor Trustee on
9 February 24, 2014, citing the second paragraph of Article 14, Section 6 as his authority to do so;
10 however as noted herein, she omitted the preceding paragraph relating to the change of situs
11 which is the condition precedent before an amendment can be authorized. Although the FHT
12 authorizes the Trust Protector and/or the beneficiaries to appoint a successor trustee in certain
13 circumstances, the change of situs could only be authorized upon consent by all beneficiaries,
14 and approval by a trustee in the original situs of Alaska
15

16
17
18 When the terms of a trust are not followed, the resulting actions based upon such
19 deviation must be invalidated.¹² Under the terms of the FHT, discussed above, it was not
20 Dunham's consent that was required to change the situs. The timing of the purported First
21 Amendment and Dunham's consent put the cart before the horse. In order to move the situs of
22 the FHT from Alaska to Nevada or any other jurisdiction, all the beneficiaries had to consent,
23 the "then acting Trust Protector" had to consent, and the Alaska trustee had to consent only after
24 obtaining the requisite legal advice. Only then could a change in situs occur. (This is a
25
26

27
28 ¹² *Northwestern University v. McLoraine*, 108 Ill. App. 3d 310, 438 N.E.2d 1369 (1982) (This rule was applied where the settlor had neglected to follow the terms of the trust which required for an amendment only that the settlor put the amendment in writing, sign it, and deliver it to the trustees during the settlor's lifetime.)

1 different and more demanding standard than merely changing the trustee to another Alaska
2 trustee. Another Alaska Trustee could have been appointed, and the consent of all the
3 beneficiaries could have been obtained; then upon agreement by the Trustee, all beneficiaries,
4 and the Trust Protector, the situs could have been validly changed. However, the FHT's
5 purported First Amendment attempts to change the FHT's situs while concurrently appointing
6 Dunham as a "directed trustee". Again, Dunham's valid appointment as a Trustee, and its
7 consent to serve, could have been achieved only after the situs of the FHT was changed from
8 Alaska to Nevada. Had all of the beneficiaries consented, the decision to change the situs may
9 have found a more stable legal basis had Dunham been doing business in Alaska. But as a
10 Nevada trustee, Dunham would have had to already be in tenure as trustee, procured advice
11 from legal counsel about the tax and other consequences of moving the FHT situs, and then
12 authorized the actual change in FHT's situs from Alaska. The requisite consent of an authorized
13 Alaska trustee and all the beneficiaries does not appear in the purported First Amendment or in
14 any other document, and Caroline Davis does not provide any other evidence of a Trustee's
15 consent between December 2013 and February 2014. The condition precedent of all the
16 beneficiaries' consents and the Alaska trustee's consent was not met in order to provide
17 authority to then acting Trust Protector, Stephen Lehnardt, to change the situs of the FHT
18 without the consent of an Alaska Trustee as required by the terms of the FHT. The FHT's
19 purported First Amendment's change of situs is, therefore, invalid.

24 Establishing the validity of the FHT's purported First Amendment under NRS 164.010
25 without invoking Alaska jurisdiction is Caroline's "attempted foothold" in her urging for this
26 Court to take improper *in rem* jurisdiction over the FHT, FHT Holdings, and personal
27 jurisdiction over Dunham, but more importantly is the defective basis upon which she urges this
28

1 Court to assume jurisdiction over Christopher in all his capacities within any family entity,
2 foreign or domestic, including the Revocable Trust and the Davis Family Office which are
3 residents of Missouri. Even assuming arguendo that jurisdiction is proper through the untenable
4 theory that the purported First Amendment is valid, this Court is only statutorily authorized to
5 obtain jurisdiction over the FHT if the prerequisites of NRS 164.010 are met. As such, Caroline
6 is more than willing to overlook the FHT's requirements for change of situs and the
7 jurisdictional prerequisites, and arrive at the erroneous conclusion that somehow Christopher
8 and Mr. Lenhardt "consented to the jurisdiction of this Court by operation of law." Noticeably,
9 Caroline cites NRS 163.5555 as authority for this statement but ignores the requirement that the
10 FHT be subject to the laws of Alaska, which, is clearly in dispute precisely because of the
11 invalidity of the purported First Amendment's change of the FHT's situs to Nevada.
12

13
14 It is clear that even during the life of Beatrice B. Davis, the situs of the FHT could not be
15 changed unless her Alaska trustee had obtained an opinion of legal counsel to the effect that the
16 change in situs would not impact adversely on the spendthrift provisions of the FHT.¹³ The
17 express purpose of the FHT was to support and protect Beatrice's family for generations to
18 come, through the protection for the shares allocated to each beneficiary, so that no situation
19 would be created that could expose any of the beneficiary's shares to the claims of creditors
20 including amongst any beneficiary acting as a creditor to another.¹⁴
21

22
23 Beatrice Davis, the trustmaker, was very clear that even if a power was granted to her
24 Trustee by applicable state and federal statutes, it would be strictly limited to any express
25 limitations or contrary directions in the FHT.¹⁵ Any amendment to change the situs of the FHT
26

27
28 ¹³ See Trust, Article Fourteen, Section 6, Page 14-7 and 14-8.

¹⁴ See Trust, Article 8, Section 3 (b), Page 8-3

¹⁵ See Trust, Article Thirteen, Section 3.z, Page 13-19.

1 would require the opinion of legal counsel as to its effect and be curtailed, if applicable, by the
2 terms of the FHT. This protection is implicit in the requirement that the advice of legal counsel
3 be sought by the Trustee prior to a change in situs of the FHT.¹⁶ There is simply no evidence to
4 suggest that such an opinion was obtained by the Alaska Trustee prior to the purported change
5 in FHT situs.
6

7 Because of the lack of evidence of the required consent by the Alaska trustee and all the
8 beneficiaries, and because the Alaska trustees initiated and completed all the transactions for
9 which Caroline is demanding an account, the presence of the predecessor Alaska trustees acting
10 prior to February 24, 2014 (the date of the purported First Amendment) is indispensable to this
11 matter, in order to determine the validity and consent issues discussed herein. Without the
12 indispensable party(ies) being joined, including Alaska Trust, the predecessor trustee and
13 successor in interest of Alaska USA, and/or another Alaskan successor after December 5, 2013,
14 the matter cannot properly adjudicated.
15
16

17 **C. Indispensible Parties to this Action and Caroline's Failure to Provide Notice or**
18 **Service**

19 Caroline alleges that, "During their tenure as Trustee, both Alaska¹⁷ and Alaska USA
20 distributed approximately \$2,164,744.68, from loans taken against the Ashley Cooper Life
21 Insurance Policy, to Christopher individually, as Trustee of the Beatrice B. Davis Revocable
22 Living Trust, dated April 4, 1990, as amended (the "Revocable Trust"), and as Manager of the
23 Davis Family Office, a Missouri limited liability company (the "Davis Office"). Caroline
24 apparently believes that the Alaska trustees which allegedly procured more than two million
25
26

27
28 ¹⁶ See Trust, Article Fourteen, Section 6, Page 14-7 and 14-8.

¹⁷ Alaska Trust Company was the predecessor trustee of the Beatrice B. Davis Family Heritage Trust dated July 28, 2000 prior to Alaska USA Trust Company.

1 dollars in policy loans from Ashley Cooper Life Insurance Policy for various FHT purposes,
2 including making loans to Beatrice and paying their own fees, are not indispensable parties,
3 simply because she alleges that, Christopher, in his individual capacity, and in capacity as
4 Trustee of the Revocable Trust, and as Manager of the Davis Office, was the only individual to
5 receive distributions as a result of such loans and the only one privy to the information sought
6 by Ms. Davis..."¹⁸ Her allegation is misplaced and unsupported by the evidence that was
7 tendered to the Court.
8

9
10 Caroline apparently believes that neither Beatrice, nor the Alaska trustees, nor any other
11 entity, were the recipients of any of the FHT funds borrowed from the Ashley Cooper Life
12 Insurance Policy, which based upon the administration expenses by Alaska and/or Alaska USA
13 or the Trust Protector is improbable at best. Under Alaska law and almost every other
14 jurisdiction in the United States, a trustee is entitled to fees, and the mandate of an accounting of
15 trust assets is directed to the trustee that actually administered the trust funds or assets, not to a
16 beneficiary or other creditor or debtor of the trust.¹⁹ In this case, those trustees required to
17 account would be Alaska Trust and Alaska USA (now merged into Alaska USA) and they are
18 the only ones who could account for these transactions and whether or not they received any of
19 those funds including but not limited to their administration costs or other investment expenses.
20 Because only they would have such information, they are a necessary and indispensable party.
21 Caroline's request would greatly prejudice and unduly burden Christopher to secure information
22 from the prior trustees in Alaska for documentation that Caroline desires through a proceeding
23 in Nevada, during the time that she had co-equal status with him as a beneficiary. Alaska and/or
24 Alaska USA would be the proper parties from whom to request her requested information.
25
26
27
28

¹⁸ See Opposition at 7:20-22.

1 Notably, Caroline alleges that Dunham Trust Company is an indispensable party, having
2 allegedly received a mere \$25,000 of the total amount of policy loans (presumably for its fees
3 and expenses) while Alaska and Alaska USA are not indispensable parties after having
4 allegedly received and distributed \$2,164,744.68 as well as allegedly transferring all the assets
5 of the FHT to Dunham. Even the \$25,000 allegedly received by Dunham Trust Company was
6 never proven or the basis upon which to take jurisdiction. Interestingly, the information Caroline
7 Davis is requesting would be in the possession of the two Alaska trustees that she claims are not
8 indispensable, which is an unreasonable argument. It is unclear if Caroline even bothered to
9 request an accounting from either Alaska Trust or Alaska USA concerning their alleged receipt
10 and distribution of \$2,164,744.68, or from Dunham regarding the \$25,000 that was allegedly
11 loaned during Dunham Trust Company's alleged trusteeship before rushing to this court for a
12 remedy. As a beneficiary, she could have easily requested this information from these trustees
13 without filing the present court action.

14
15
16
17 Because of her rush to court without apparently requesting these documents from the
18 trustees, Caroline now attempts twice to indicate that she is "not now objecting to the loans and
19 distributions being made or claiming any breach of fiduciary duty..." or she "is not now
20 claiming any willful misconduct or gross negligence by Alaska or Alaska USA."²⁰ However,
21 whether or not she is now objecting to loans or making claims against Alaska or Alaska USA is
22 irrelevant to the fact that they are the parties holding the information she seeks. She has asked
23 this Court to assume jurisdiction over the Nevada trustee, the FHT, the Trust Protector and trust
24 adviser, and if she succeeds, she will likely file any future action in this same Nevada case.
25 Therefore, her allegation that "Alaska and Alaska USA have no interest in the outcome of the
26
27
28

¹⁹ See Alaska Statute 13.36.080; See also NRS 164.015 and NRS 153.031(1)(h).

1 relief being sought by Ms. Davis in her Petition” is simply a pretext for allowing her to later
2 name them as party defendants. In addition to Christopher, Alaska and Alaska USA would have
3 every interest in the outcome of this action because they were trustees of the Trust who made
4 the Trust loans which are the subject of Caroline’s concerns, and over which she has asked this
5 Court to exercise *in rem* jurisdiction. Furthermore, they were trustees for the time periods in
6 which Caroline seeks all information and, therefore, logically any information and/or claims
7 arising from the information in Alaska and Alaska USA’s possession are relevant to them.
8

9 Relying on the purported validity of the First Amendment to the FHT, Caroline comes to
10 the misleading conclusion that according to her, “[because] Dunham Trust lacked the authority
11 to act, the transfer of the Ashley Cooper Life Insurance Policy must have been done at the
12 direction of Christopher, as Investment Trust Advisor.” Noticeably, Caroline removes any
13 reference to the Alaska or Alaska USA Trustees who would have the information, and who
14 approved any alleged transfers and have the information pertaining thereto. Caroline freely
15 omits information to wrongfully obtain the information she seeks. She further ignores that
16 Christopher, as manager of an LLC wholly owned by the Trustee would not have the authority
17 to transfer the policy to the FHT Holdings, LLC. Caroline leaps to her finger-pointing
18 apparently without bothering to request the transfer documents either from Dunham, as owner
19 of the FHT Holding, LLC or the Puerto Rico custodian.
20
21
22

23 Caroline is simply attempting to gain access to records that she could request from the
24 parties that she claims are not indispensable, and to delve into Christopher’s personal affairs.
25 She has asked for an accounting from him as to the use of all the loan proceeds or distribution
26 from the FHT, without regard to the entity or person who in fact was the borrower! It is a
27
28

²⁰ See Page 7, lines 24-25 and Page 8, lines 17-18 of Caroline Davis’s Objection.

1 question for the Alaska trustee as to whether the loans or distributions were made in accordance
2 with the provisions of the FHT. With 20/20 hindsight, Caroline may regret that she did not
3 borrow funds, request distributions, or demand an accounting from the Alaska trustees while she
4 was able to do so. Now she is asking this Court to turn a blind eye and "look beyond"²¹ her
5 failure to even make any appropriate request on the proper parties or serve the proper parties
6 that would have the information that she is seeking. Christopher respectfully requests that this
7 Court reconsider its order and grant his motion to dismiss and further deny Caroline's claims in
8 their entirety.
9

10
11 **D. Individual Parties or Entities Were Not Properly Served for the Court to Exercise**
12 **Jurisdiction, and FHT Holdings' Corporate Form May Not Be Disregarded**

13 In an effort to buttress their argument regarding their lack of proper service upon FHT
14 Holdings, LLC, Caroline cited to inapplicable case law from Surrogate's Court of New York,
15 New York County, which does not address the necessity of providing proper service to a
16 corporation. In similar fashion to her omission of the language of the FHT as it related to the
17 condition precedent to any future amendment, she even withheld the pertinent language for the
18 cited case which actually held that, "It is sometimes said that where an estate or trust owns all or
19 substantially all of the shares of a corporation, the corporate form may be disregarded and the
20 situation viewed just as if the fiduciaries held title to the corporate assets. This would appear to
21 be an oversimplification of the matter. It is not so much a matter of disregarding the corporate
22 form, but rather of giving paramount consideration to the testamentary plan and scheme, and
23 effectuating it in the manner prescribed by the testator. (citation omitted) Sometimes, due
24 consideration of the testamentary plan demands that the corporate form be respected. This is
25
26
27
28

²¹ Petition at 7:5-6.

1 particularly true where the testator directed the formation of a corporation or the continuance of
2 one formed during his lifetime. (citation omitted).²²

3 Under the facts of this case, Beatrice, as Trustmaker, did not form FHT Holdings, Inc.,
4 and did not specify that FHT Holdings, Inc. be given consideration as part of her testamentary
5 plan and scheme. Based upon the definition of the case cited by Caroline, she is attempting to
6 oversimplify this matter, which cannot be done with regard to the facts presented in this matter.
7

8 Furthermore, in *Swensen v. Sheppard*, our Nevada Supreme Court recognized that NRS
9 164.010(1) and NRS 164.015(6) do not give the court jurisdiction to impose personal
10 judgments.²³ Likewise, it found that it could not impose personal liability on individuals or
11 entities which "required the court to acquire 'personal jurisdiction over [them as] part[ies],
12 normally through appropriate process based on contacts with the jurisdiction or through [their]
13 general appearance therein to defend on the merits."²⁴
14

15 In her Opposition, however, Caroline attempts to request this court take exception to the
16 requirements for proper service and notice, which is entirely improper. Caroline is attempting
17 to use the relaxed standards of statutory *in rem* jurisdiction for the more stringent requirements
18 necessary to obtain the necessary personal jurisdiction over Christopher Davis, individually or
19 upon FHT Holdings, LLC. Again, this is improper. Proper notice and service are required for
20 personal jurisdiction over a party especially when requesting the court to exercise power and
21 authority over an individual party or upon a business entity.
22
23
24
25

26 ²² *In the Matter of Schnur*, 39 Misc. 2d 880, 887, 242 N.Y.S.2d, at 132 (1963).

27 ²³ *Swensen v. Sheppard (In re Aboud)*, 314 P.3d 941, 946 (Nev. 2013)

28 ²⁴ *Id.*, citing Restatement (Second) of Judgments § 30(2) cmt. c; see *Young v. Nev. Title Co.*, 103 Nev. 436, 442, 744 P.2d 902, 905 (1987) ("A court does not have jurisdiction to enter judgment for or against one who is not a party to the action.")

1 Therefore, even if the Court were to obtain jurisdiction over the insurance policy
2 administered by a Puerto Rico insurer with the advice of the Canadian broker-dealer investment
3 advisor, Caroline would also have to seek personal jurisdiction over Christopher, individually,
4 or FHT Holdings, LLC to obtain any relief she seeks. She did not do so.
5

6 Therefore, the due process rights of the corporation must be respected, and service
7 properly administered in order to obtain jurisdiction over Christopher, individually, and as
8 manager of FHT Holdings, LLC. Therefore, Caroline's Original Petition should be dismissed.
9

10 **E. Additional Indispensable Parties Named in Opposition Were Not Served; therefore,**
11 **Jurisdiction is Improper over Them.**

12 Caroline admittedly did not include additional parties in her Original Petition that she
13 now alleges were recipients of FHT funds and loans from the insurance policy. Caroline alleges
14 that, "During their tenure as Trustee, both Alaska and Alaska USA distributed approximately
15 \$2,164,744.68, from loans taken against the Ashley Cooper Life Insurance Policy, to
16 Christopher individually, as co-Trustee (with her) of the Beatrice B. Davis Revocable Living
17 Trust, dated April 4, 1990, as amended (the "Revocable Trust"), and as Manager of the Davis
18 Family Office, a Missouri limited liability company (the "Davis Office"). In order to allegedly
19 distribute loans, Alaska and Alaska USA must have been recipients of FHT funds. In order to
20 make a loan of FHT funds to Alaska and Alaska, the custodian of the Ashley Cooper Life
21 Insurance Policy must have been in receipt of FHT funds. If, as alleged, FHT funds were
22 received by Christopher, the Revocable Trust, and the Davis Family Office from Alaska and
23 Alaska USA, all three would have been recipients of those funds as distributions. Of the prior
24 six alleged recipients, none of them was afforded proper notice or service in this matter.
25
26 Therefore, this court lacks jurisdiction over these parties. Particularly, Nevada law does not
27
28

1 allow for this Court to take jurisdiction over the Revocable Trust and the Davis Family Office,
2 which are Missouri entities, without examining the requirements necessary for jurisdiction over
3 foreign entities holding only personal property.

4
5 Caroline, in effect, argues 1) the entity authorized to make the policy loan is not an
6 indispensable party, 2) that the party making the loans or distributions does not even need to be
7 noticed or served concerning the policy loans, 3) the only individual alleged as a recipient does
8 not need to be served pursuant to NRCP 4; and 4) that notice or service either under NRCP 4 or
9 NRS 155.010 does not need to be provided to the remaining alleged distributees and recipients
10 of FHT funds. These four arguments violate all constitutionally protected due process rights
11 and related laws existent in Nevada, and likely every other jurisdiction in the United States.
12 Proper parties should be included in lawsuits affecting their rights or responsibilities and proper
13 personal and subject matter jurisdiction should be obtained over all parties in such lawsuits.

14
15 Caroline admittedly understands the importance of obtaining *in rem* jurisdiction over a
16 trustee of a trust pursuant to NRS 164.010, because she asks this Court to assume jurisdiction of
17 the FHT pursuant to this statutory authority. Notwithstanding this admission, she sought
18 jurisdiction over Christopher Davis, individually, as trustee of the Revocable Trust, and as
19 manager for FHT Holdings without even bothering to properly serve them with personal service
20 pursuant to NRCP 4. Furthermore, Caroline failed to serve the custodian of the Ashley Cooper
21 Life Insurance Policy of which she claims provided the loans to the FHT. Caroline did not even
22 properly serve Tarja (a mandatory beneficiary for purposes of consent to the purported First
23 Amendment) properly under 155.010, which failure further renders a fatal blow to any finding
24 that Tarja subsequently acquiesced to purported First amendment which she never consented to
25 in the first place. The aforementioned parties were admittedly never even properly served by
26
27
28

1 Caroline, and therefore her Petition must be dismissed for lack of proper jurisdiction over these
2 parties.

3 Notice and service of process were never properly given to these parties, and the Court is
4 without jurisdiction over them. Therefore, Caroline's claims in her Petition must be dismissed.
5

6 **F. The Alaska Trustees are Indispensible Parties and Meet NRCP 19 Requirements;**
7 **therefore, without a Joinder of these Parties, this Matter Must be Dismissed.**

8 In Reply to the NRCP 19 factors discussed by Caroline in her Opposition, it is evident
9 that Caroline belies her own statements. Caroline indicates on the one hand that Alaska and
10 Alaska USA would not be "placed in a position in which they would need to protect any
11 interest"²⁵ while on the same page indicating that Caroline is "not now claiming any willful
12 misconduct or gross negligence by Alaska or Alaska USA" suggesting that when she obtains
13 any of Alaska or Alaska USA documents that possible claims are likely to follow.²⁶ Alaska or
14 Alaska USA must be allowed to defend themselves if necessary or protect themselves from
15 liability in the accuracy of information that may be provided during their tenure as Trustees of
16 the FHT to avoid claims of willful misconduct or gross negligence by Caroline. More
17 importantly, they must be responsible for the information that Caroline seeks improperly from
18 Christopher.
19

20 Christopher will be subjected to double or multiple or otherwise inconsistent obligations
21 in possibly many jurisdictions as a result of Caroline's claims without the necessary parties,
22 Alaska and Alaska USA, joined to the present matter. Caroline seems to ignore the fact that she
23 has now named multiple Defendants in this matter whose interests must all be considered,
24
25
26
27

28 ²⁵ See Caroline's Opposition, Page 8, lines 21-22.

²⁶ See Caroline's Opposition, Page 8, lines 17-18 (emphasis added).

1 especially in light of the fact that proper service has not been effectuated on them for an order or
2 judgment to be rendered against them in this matter.

3 Curiously, Caroline then requests the Court to seek relief from Christopher individually
4 if the Court does find that Alaska and Alaska USA are indispensable parties. She wrongfully
5 asks the court to order Christopher to provide the documents that are in the possession of Alaska
6 and Alaska USA's without gaining proper jurisdiction over him individually. She wrongfully
7 alleges that such a request would allegedly not be prejudicial to Christopher and allegedly
8 would be an adequate remedy, although the requested documents would be in the Trustee's
9 possession.
10

11 She also falsely alleges that Alaska cannot allegedly assume jurisdiction over
12 Christopher, erroneously citing NRCP 19(b) for this proposition.²⁷ With proper service to
13 Christopher, Caroline could obtain jurisdiction over Christopher in Alaska if Alaska has
14 jurisdiction over the FHT.²⁸
15

16 Joinder of Alaska and Alaska USA, Inc., is necessary as previously explained in
17 Christopher's Motion to Dismiss and herein. If their joinder is not feasible, then this matter
18 must be dismissed, because they are necessary and indispensable parties to this matter.
19

20 **G. The Court Cannot Assume Jurisdiction based on the Remedy of Constructive Trust**
21 **as Jurisdiction is Subject to Statutory and Due Process Limitations**
22

23
24 ²⁷ See Caroline's Opposition, Page 9, lines 14-15 and fn 24.

25 ²⁸ See AS 13.36.375. Trustee Advisor: (a) A trust instrument may provide for the appointment of a person to act as
26 an advisor to the trustee with regard to all or some of the matters relating to the property of the trust. (b) Unless the
27 terms of the trust instrument provide otherwise, if an advisor is appointed under (a) of this section, the property and
28 management of the trust and the exercise of all powers and discretionary acts exercisable by the trustee remain
vested in the trustee as fully and effectively as if an advisor were not appointed, the trustee is not required to follow
the advice of the advisor, and the advisor is not liable as or considered to be a trustee of the trust or a fiduciary
when acting as an advisor to the trust.; See also AS 13.36.035 (a) The court has exclusive jurisdiction of
proceedings initiated by interested parties concerning the internal affairs of trusts, including trusts covered by (c) of
this section. Except as provided in (c) and (d) of this section, proceedings that may be maintained under this section

1 The Nevada Supreme Court reviews jurisdictional issues de novo.²⁹ In rem jurisdiction only
2 allows the Court to enter judgment against specific property.³⁰ NRS § 164.010 provides that the
3 court may take in rem jurisdiction over a trust statutorily if requisite evidence is found by the
4 Court to exist. NRS 164.010 provides in pertinent part that:

5
6 1. Upon petition of any person appointed as trustee of an express trust by any written
7 instrument other than a will, or upon petition of a settlor or beneficiary of the trust, the district
8 court of the county in which the trustee resides or conducts business, or in which the trust has
9 been domiciled, shall consider the application to confirm the appointment of the trustee and
10 specify the manner in which the trustee must qualify. Thereafter the court has jurisdiction of the
11 trust as a proceeding in rem.
12

13 2. If the court grants the petition, it may consider at the same time any petition for
14 instructions filed with the petition for confirmation.
15

16 3. At any time, the trustee may petition the court for removal of the trust from continuing
17 jurisdiction of the court.

18 4. As used in this section, "written instrument" includes, without limitation, an electronic
19 trust as defined in NRS 163.0015.
20

21 However, this Court took jurisdiction not based upon the statutory prerequisites set forth in
22 NRS § 164.010, but purportedly upon the theory of constructive trust.

23 Without even determining whether Christopher resides or conducts business here in the
24 capacity of a trustee, the Court reasoned that purportedly since action has been taken here, the
25

26 are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of
27 other matters involving trustees and beneficiaries of trusts.

28 ²⁹ *Baker v. Eighth Judicial Dist. Court*, 116 Nev. 527, 531, (2000).

³⁰ *Chapman v. Deutsche Bank Nat'l Trust Co.*, 302 P.3d 1103, 1106 (2013).

1 Court had the power to construct a trust and take jurisdiction. However, a constructive trust is a
2 remedy the court can pronounce after establishing jurisdiction, not a means to obtain it.

3 In order to create a constructive trust the court must first have jurisdiction over the property.
4 Here, the Court has no valid basis for jurisdiction over the Trust property. The change in situs is
5 facially deficient because it does not have unanimous consent of all beneficiaries nor does it
6 have the consent of an Alaska trustee provided after obtaining an opinion of counsel.
7 Additionally, the sole asset of the trust, the Ashley Cooper Life Insurance Policy, is not within
8 the state of Nevada. Finally, with an invalid change in situs the trust is still an Alaska trust, the
9 role of investment trust advisor does not exist, and there is no connection whatsoever to Nevada.
10 Alaska has jurisdiction over the trust and has the power to create a constructive trust over any
11 property in Nevada. This Court simply did not have jurisdiction to create a constructive trust
12 and therefore cannot exercise jurisdiction over the Trust or Christopher D. Davis based on the
13 theory of constructive trust.
14

15
16 Even improbably assuming *arguendo* that there is some basis for *in rem* jurisdiction, where a
17 state statute authorizes consent to jurisdiction based upon a finding of *in rem* jurisdiction, that
18 statute is still subject to the requirements of federal due process.³¹ Federal due process requires
19 that the defendant has purposely developed substantial minimum contacts with the forum state
20 and that the assumption of jurisdiction does not violate traditional notions of justice and fair
21 play.³² NRS §163.5555 provides that:
22

23
24 If a person accepts an appointment to serve as a trust protector or a trust adviser of a trust
25 **subject to the laws of this State**, the person submits to the jurisdiction of the courts of this
26 State, regardless of any term to the contrary in an agreement or instrument. A trust protector

27 ³¹ *Doe v. Unocal Corp.*, 248 F.3d 915, 922, (9th Cir. 2001)

28 ³² *Id.*

1 or a trust adviser may be made a party to an action or proceeding arising out of a
2 decision or action of the trust protector or trust adviser.³³ (emphasis added).

3 Assuming the untenable position that this Court had jurisdiction to create a constructive
4 trust, this fact standing alone does not provide a basis for jurisdiction over Christopher D. Davis.
5 NRS § 163.5555 provides jurisdiction over trust advisors, however the trust adviser may only be
6 made a party to an action or proceeding based upon a determinant decision or action.
7

8 In order to understand the extent of jurisdiction granted under NRS § 163.5555, several
9 factors must be considered. First, this statute must be read in conjunction with NRS § 164.010
10 which only provides the court limited *in rem* jurisdiction over trusts. Therefore, jurisdiction
11 under NRS 164.010 acts a condition precedent to a finding of jurisdiction under NRS
12 §163.5555, where the powers of an advisor are simply a subset of the overall fiduciary powers
13 granted to a trustee, who may be confirmed under NRS 164.010.
14

15 Second, in order for NRS § 163.5555 to provide for jurisdiction over the trust advisor, it
16 must comply with the requirements of federal due process. These requirements include a finding
17 that the defendant has sufficient minimum contacts with the forum state, that the defendant
18 purposefully availed himself of the laws of the forum state and that the assumption of
19 jurisdiction does not offend traditional notions of justice and fair play. This court made no
20 findings of minimal contacts, purposeful availment, or whether jurisdiction would offend
21 notions of justice and fair play. The statute itself highlights that fact that a “trust adviser may be
22 made a party to an action or proceeding arising out of a decision or action.” Clearly, if the
23 decision or action causing sufficient minimum contacts with the Trust in the state of Nevada is
24 absent, there can be no jurisdiction over the trust adviser. This means, in effect, that liability is
25
26
27

28 ³³ Nev. Rev. Stat. § 163.5555

1 tied to the decisions made by the advisor in the capacity of trust advisor. Therefore, this Court's
2 exercise of jurisdiction over Christopher in his purported role as investment adviser is improper,
3 as there is no evidence of any decision or action with the Trust in the state of Nevada.
4

5 This Court also lacks jurisdiction over Christopher as manager of FHT holdings. Assuming
6 the court finds that the change in situs was not deficient or that it can legitimately assume
7 jurisdiction over the Trust based on a theory of constructive trust and that NRS § 163.5555
8 allows the court to assume jurisdiction over Chris as investment trust adviser, the Court still did
9 not properly establish jurisdiction over Christopher in his role as manager of the FHT. There is
10 no statute that grants *in rem* jurisdiction individually over the manager of an LLC solely based
11 on his or her acceptance of an officer's position. Additionally, as discussed above, due process
12 requires a finding of minimum contacts, purposeful availment and that jurisdiction does not
13 offend the notions of justice and fair play. Again this court entered no such findings to justify
14 jurisdiction over Christopher as manager of the LLC. Christopher respectfully requests that this
15 Court reconsider its order and grant his requested relief.
16
17

18 III. CONCLUSION


19 For the foregoing reasons, Christopher respectfully requests the Court do the following.

- 20 1. Reconsider the Order filed June 24, 2015, and grant Christopher D. Davis's motion to
21 dismiss pursuant to NRCP 12(b) and NRCP 19;
22
- 23 2. Reconsider the Order filed June 24, 2015, and vacate its finding of jurisdiction over
24 Christopher D. Davis in his role as investment trust advisor and in his role as manager of
25 FHT Holdings, LLC;
26
- 27 3. Reconsider the Order filed June 24, 2015, and find that this Court lacks jurisdiction over
28 the Trust and over Christopher D. Davis based on the lack of condition precedent in the

1 form of a failure to procure unanimous consent by the Trust beneficiaries to change the
2 Trust situs purportedly effectuated by the First Amendment dated February 24, 2014,
3 and/or alternatively, based upon lack of statutory prerequisites as defined under NRS
4 §164.010 to form a basis for jurisdiction and/or lack of determinative action or decision
5 under NRS §163.5555 by the purported trust adviser.
6

7 DATED this 14 day of July, 2015.

8 Respectfully Submitted,
9 **ROLAND LAW FIRM**

10
11 
12 Harriet H. Roland, Esq.
13 NV Bar No. 5471
14 2470 E. St. Rose Pkwy, Ste. 105
15 Henderson, NV 89074
16 Telephone: (702) 452-1500
17 Facsimile: (702) 920-8903
18 hroland@rolandlawfirm.com

19
20
21
22
23
24
25
26
27
28
Attorney for Christopher D. Davis

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Anthony L. Barney, Ltd., and not a party to this action.
3 I further certify that except as otherwise noted on July 14, 2015, I served the foregoing
4 NOTICE OF PETITION AND PETITION FOR RECONSIDERATION OF THE ORDER
5 DATED MAY 19, 2015 RE: PETITION TO ASSUME JURISDICTION OVER THE
6 BEATRICE B. DAVIS FAMILY HERITAGE TRUST DATED JULY 28, 2000, AS
7 AMENDED ON FEBRUARY 24, 2014, TO ASSUME JURISDICTION OVER
8 CHRISTOPHER D. DAVIS AS INVESTMENT TRUST ADVISOR, STEPHEN K.
9 LEHNARDT AS DISTRIBUTION TRUST ADVISOR, TO CONFIRM DUNHAM
10 TRUST COMPANY AS DIRECTED TRUSTEE, AND FOR IMMEDIATE
11 DISCLOSURE OF DOCUMENTS AND INFORMATION FROM CHRISTOPHER D.
12 DAVIS, by first class US mail, postage prepaid, upon the following persons or entities:

13 Tarja Davis
14 3005 North Beverly Glen Circle
15 Las Angeles, California 90077

16 And
17 514 West 26th Street, #3E
18 Kansas City, Missouri 64108

19 Ace Davis
20 c/o Winfield B. Davis
21 366-6 Habu Aridagawa Arida
22 Wakayama 643-0025
23 JAPAN

24 Christopher D. Davis
25 3005 North Beverly Glen Circle
26 Los Angeles, California 90077

27 And
28 514 West 26th Street, #3E
Kansas City, Missouri 64108

Registered Agent Solutions, Inc.
Registered Agent for FHT Holdings, LLC, a Nevada Limited Liability Company
4625 West Nevso Drive, Suite 2
Las Vegas, Nevada 89103

Stephen Lehnardt
20 Westwoods Drive
Liberty, Missouri 64068
Stephen@lehnardt.com

1 DUNHAM TRUST
2 c/o SHANNA CORESSAL, CTFA
3 241 Ridge Street, Suite 100
4 Reno, Nevada 89501

5 Winfield B. Davis
6 366-6 Habu Aridagawa Arida
7 Wakayama 643-0025
8 JAPAN

9 Mark Solomon, Esq.
10 Joshua Hood, Esq.
11 **SOLOMON DWIGGINS & FREER, LTD.**
12 9060 W. Cheyenne Ave.
13 Las Vegas, NV 89129
14 *Attorney for Petitioner Caroline Davis*

15 Charlene Renwick, Esq.
16 Lee, Hernandez, Landrum & Garofalo
17 7575 Vegas Drive, #150
18 Las Vegas, Nevada 89128


19
20
21 
22 Employee of Anthony L. Barney
23
24
25
26
27
28



EXHIBIT 11

1 DECL
2 Tarja Davis
3 3005 North Beverly Glen Circle
4 Los Angeles, California 90077
5 Appearing Pro Per


CLERK OF THE COURT

6
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 In the Matter of:

Case No.: P-15-083867-T

10 The Beatrice B. Davis Family Heritage Trust,
11 dated July 28, 2000

Dept. 26

12
13 DECLARATION OF TARJA DAVIS

14
15 I, Tarja Davis, do hereby declare under penalty of perjury the following:


- 16 1. I am over the age of majority, and my current address is 3005 North Beverly Glen Circle
17 in Los Angeles California, 90077.
18 2. I am the wife of Christopher D. Davis.
19 3. Christopher D. Davis and I were married on February 22, 2012 in Los Angeles County
20 and I have attached a copy of my marriage certificate to this affidavit.
21 4. We have been living together since our marriage to one another in 2012.
22 5. As the spouse of the Christopher D. Davis, I am a beneficiary of The Beatrice B. Davis
23 Family Heritage Trust dated July 28, 2000, an Alaska Trust.
24 6. I was not informed of any amendment to The Beatrice B. Davis Family Heritage Trust
25 during the time of my marriage to Christopher B. Davis and did not consent to move the
The Beatrice B. Davis Family Heritage Trust from Alaska to Nevada.

DECLARATION OF TARJA DAVIS - I

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

7. I was not informed of and did not consent to any change in situs of The Beatrice B. Davis Family Heritage Trust from Alaska to Nevada.

Dated this 24 day of July, 2015.



Tarja Davis, Declarant

CALIFORNIA JURAT WITH AFFIANT STATEMENT

See Attached Document (Notary to cross out lines 1-6 below)

See Statement Below (Lines 1-5 to be completed only by document signer(s), not Notary)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this

24th day of July, 2015, by

(1) TACIA WILSON, aka TACIA DAVIS
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me. (.) (.)

(and

(2) _____
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature [Signature]
Signature of Notary Public

Please Notary Seal Address

OPTIONAL

Even if the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent misuse and reattachment of this form to another document

Further Description of Any Attached Document

Date of Issue: 24th day of July, 2015

Page(s) of Document: _____

Page(s) of Signature(s): _____

Top of Page(s) here

Top of Page(s) here

Exhibit 1

STATE OF CALIFORNIA

CERTIFICATION OF VITAL RECORDS

COUNTY OF LOS ANGELES • REGISTRAR-RECORDER/COUNTY CLERK

CONFIDENTIAL

LICENSE AND CERTIFICATE OF MARRIAGE 5201219002502

MUST BE LEGIBLE - MAKE NO ERASURES, WHITEOUTS, OR OTHER ALTERATIONS
USE DARK INK ONLY

STATE FILE NUMBER		LOCAL REGISTRATION NUMBER	
1A FIRST NAME TARJA		1B MIDDLE -	
1C CURRENT LAST WAINWRIGHT		1D LAST NAME AT BIRTH (IF DIFFERENT THAN 1C) CANDELIN	
2 DATE OF BIRTH (MM/DD/YYYY) 04/26/1964	3 STATE/COUNTRY OF BIRTH FINLAND	4 PREV. MARRIAGE(S) END 01	5A LAST MARRIAGE(S) END BY DEATH <input type="checkbox"/> ANNUITY <input type="checkbox"/> TERM <input type="checkbox"/> <input type="checkbox"/> HA
6 ADDRESS 2220 COLDWATER CANYON		7 CITY BEVERLY HILLS	8 STATE/COUNTRY CALIFORNIA
9 ZIP CODE 90210		10 DATE ENDED (MM/DD/YYYY) 09/17/2010	
10A FULL BIRTH NAME OF FATHER/PARENT ILMO CANDELIN		10B STATE OF BIRTH (IF OUTSIDE U.S. ENTER COUNTRY) FINLAND	
11A FULL BIRTH NAME OF MOTHER/PARENT PIRKKO RAEVARRA		11B STATE OF BIRTH (IF OUTSIDE U.S. ENTER COUNTRY) FINLAND	
12A FIRST NAME CHRISTOPHER		12B MIDDLE DEAN	
12C CURRENT LAST DAVIS		12D LAST NAME AT BIRTH (IF DIFFERENT THAN 12C) -	
13 DATE OF BIRTH (MM/DD/YYYY) 05/26/1951	14 STATE/COUNTRY OF BIRTH MISSOURI	15 PREV. MARRIAGE(S) END 01	16A LAST MARRIAGE(S) END BY DEATH <input type="checkbox"/> ANNUITY <input type="checkbox"/> TERM <input type="checkbox"/> <input type="checkbox"/> HA
17 ADDRESS 2220 COLDWATER CANYON		18 CITY BEVERLY HILLS	19 STATE/COUNTRY CALIFORNIA
20 ZIP CODE 90210		21 DATE ENDED (MM/DD/YYYY) 08/15/2011	
21A FULL BIRTH NAME OF FATHER/PARENT ILMO WINFIELD DAVIS		21B STATE OF BIRTH (IF OUTSIDE U.S. ENTER COUNTRY) MISSOURI	
22A FULL BIRTH NAME OF MOTHER/PARENT BEATRICE BUECKING		22B STATE OF BIRTH (IF OUTSIDE U.S. ENTER COUNTRY) MISSOURI	
<p>WE, THE UNDERSIGNED, CURRENTLY LIVING TOGETHER AS SPOUSES, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT WE ARE UNMARRIED AND THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF. WE FURTHER DECLARE THAT NO LEGAL OBJECTION TO THE MARRIAGE, NOR TO THE ISSUANCE OF A LICENSE IS KNOWN TO US. WE ACKNOWLEDGE RECEIPT OF THE INFORMATION REQUIRED BY FAMILY CODE SECTION 300 AND HEREBY APPLY FOR A CONFIDENTIAL LICENSE AND CERTIFICATE OF MARRIAGE.</p> <p>23 SIGNATURE OF PERSON LISTED IN FIELDS 1A-1D <i>Tarja Wainwright</i></p> <p>24 SIGNATURE OF PERSON LISTED IN FIELDS 1E-1H <i>Dean C. Logan</i></p>			
<p>I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT THE ABOVE-NAMED PARTIES TO A MARRIAGE HAVE PERSONALLY APPEARED BEFORE ME AND PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSONS CLAIMED; OR THAT THE PERSON PERFORMING THE CEREMONY HAS PERSONALLY APPEARED BEFORE ME AND PRESENTED AN AFFIDAVIT SIGNED BY THE PARTIES TO BE MARRIED DECLARING THAT ONE OR BOTH OF THE PARTIES ARE PHYSICALLY UNABLE TO APPEAR AND EXPLAINING THE REASONS THEREFOR. IN ACCORDANCE WITH FAMILY CODE SECTION 302, THE PARTIES HAVE FURTHER DECLARED THAT THEY MEET ALL OF THE REQUIREMENTS OF THE LAW AND HAVE PAID THE FEES PRESCRIBED BY LAW. AUTHORIZATION AND LICENSE IS HEREBY GIVEN TO ANY PERSON DULY AUTHORIZED TO PERFORM A MARRIAGE CEREMONY WITHIN THE STATE OF CALIFORNIA, TO SOLENNIZE THE MARRIAGE OF THE ABOVE-NAMED PERSONS PURSUANT TO FAMILY CODE SECTION 300. NOTE: THE MARRIAGE CEREMONY MUST TAKE PLACE IN THE CALIFORNIA COUNTY IN WHICH THE LICENSE WAS ISSUED AS IDENTIFIED IN ITEM 25F BELOW.</p> <p>25A ISSUE DATE (MM/DD/YYYY) 02/14/2012</p> <p>25B EXPIRES AFTER (MM/DD/YYYY) 05/13/2012</p> <p>25C NAME OF COUNTY CLERK DEAN C. LOGAN</p> <p>25D SIGNATURE OF CLERK OR DEPUTY CLERK <i>Dean C. Logan</i></p> <p>25E MARRIAGE LICENSE NUMBER B C016479</p> <p>25F COUNTY OF ISSUE LOS ANGELES</p> <p>25G RETURN COMPLETED MARRIAGE LICENSE TO INCLUDE ADDRESS P.O. BOX 53120, L.A., CA 90053-0120</p>			
<p>26A STATE OF CALIFORNIA, COUNTY OF LOS ANGELES</p> <p>26B TYPED NAME OF NOTARY P.O. BOX 53120, L.A., CA 90053-0120</p> <p>26C SIGNED NAME OF NOTARY P.O. BOX 53120, L.A., CA 90053-0120</p> <p>26D AFFIX NOTARY SEAL</p>			
<p>27A DATE OF MARRIAGE (MM/DD/YYYY) 02/22/2012</p> <p>27B CITY OF MARRIAGE Beverly Hills</p> <p>27C COUNTY OF MARRIAGE LOS ANGELES</p> <p>27D RELIGIOUS DENOMINATION (IF CLERGY) Universal Life</p> <p>27E NAME OF PERSON SOLENNIZING MARRIAGE (TYPE OR PRINT CLEARLY) Nancy Claiborne</p> <p>27F OFFICIAL TITLE Minister</p> <p>27G ADDRESS, CITY, STATE/COUNTRY, AND ZIP CODE 12015 Kling Street, Studio City, CA 91607</p>			
<p>28A FIRST - MUST BE SAME AS 1A TARJA</p> <p>28B MIDDLE WAINWRIGHT</p> <p>28C LAST DAVIS</p> <p>28D FIRST - MUST BE SAME AS 1E DEAN</p> <p>28E MIDDLE C</p> <p>28F LAST LOGAN</p>			
<p>29A NAME OF COUNTY CLERK DEAN C. LOGAN</p> <p>29B SIGNATURE OF CLERK OR DEPUTY CLERK <i>Dean C. Logan</i></p> <p>29C DATE RECEIVED FOR REGISTRATION MAR 8 2012</p>			

STATE OF CALIFORNIA, DEPARTMENT OF PUBLIC HEALTH, OFFICE OF VITAL RECORDS

VB-123 (01/01/2010)

This is to certify that this document is a true copy of the official record filed with the Registrar-Recorder/County Clerk.

Dean C. Logan
DEAN C. LOGAN
Registrar-Recorder/County Clerk

SEP 4 2012



* 001870239 *

This copy not valid unless prepared on registered paper displaying the Seal and Signature of the Registrar-Recorder/County Clerk.

FRANCISCO 07/11

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

1 sign on an amendment where they were only appointed in that
2 same amendment? It's impossibility, Your Honor.

3 Clearly, the trust envisioned that it was the
4 Alaska Trustee that would obtain advice and understanding
5 from counsel before they agreed to transfer the situs.
6 Dunham Trust couldn't even agree to have it transferred and
7 administered under a situs other than Nevada because
8 they're only licensed in Nevada to administer this trust
9 and clearly it wasn't them.

10 So we know in this matter that neither the Trustee
11 nor the beneficiary under the trust consented. So we
12 didn't have all of the beneficiaries as required. We
13 didn't have the Trustee, therefore no condition precedent
14 of the situs actually being changed and thereby allowing
15 any amendment to the trust. And that was originally what I
16 raised in the first -- in my first pleading in the Motion
17 to Dismiss. I expanded upon that in our Reply where I set
18 forth the very parameters of what the Court needed in order
19 to justify jurisdiction.

20 In effect, Your Honor, what we have is the -- it's
21 the first time I've seen it in my career where someone is
22 actually asking for information obviously in the context of
23 an accounting not from the Trustee, Your Honor, but from
24 the beneficiaries, the purported beneficiaries, of that
25 distribution. Therein lies the concern. We've got several

1 entities that have been named as supposedly distributees of
2 this money under the tenure of the Alaska Trustee to the
3 tune of \$2.2 million at a time when Christopher Davis was
4 not a fiduciary in any capacity. And yet, now under this
5 purported amendment that's clearly defective, for the
6 amount of \$25,000 apparently that Dunham Trust received
7 most likely for their administration costs, that there is a
8 backend run to try to use this \$25,000 out of the \$2.2
9 million to obtain jurisdiction to find documents that are
10 in the possession of the prior Trustee who would have had
11 to account for that under Alaska law and yet the recipients
12 of that money are the ones that are being asked, under our
13 statute, to account -- under a trustee statute, under
14 164.015.

15 And therein lies the indispensable party dilemma
16 that we have. We've got a situation now where, A, the
17 whole basis of their jurisdiction is based upon a faulty
18 amendment that never should have occurred and to which Mr.
19 Lehnardt, it's my understanding, has agreed is a faulty
20 amendment based upon the fact that all of the parties were
21 not brought to the table and the Trustee did not properly
22 consent.

23 And then we have the issue, Your Honor, that is
24 also concerning in that under NRCP 19(b), we're asking that
25 the case be dismissed because the parties that are asked to

1 provide the documents apparently are all indispensable
2 parties or not indispensable parties, according to
3 Caroline, but apparently are indispensable for purposes of
4 providing the documents that they need. None of the
5 service in this matter was provided properly under 164.010.

6 And, in fact, let's look at the recipients that
7 they want to receive the funds from or get an accounting of
8 those funds. They want to get it from a distributee, the
9 Davis Family Office, which is a Missouri Corporation.

10 Now, Your Honor, I don't see anything on the
11 service record that would indicate that that Davis Family
12 Office partnership was properly served. There's no Rule 4
13 service. I don't see anything that indicates that any of
14 the companies that are considered persons under our law
15 were properly served under Rule 4. They're using the
16 relaxed standard of 155.010, essentially, to serve everyone
17 and then those people that they want documents from that
18 they think essentially they can dispense with, they don't
19 notice it even at all.

20 And, so, we have a real dilemma here. One of the
21 important things about the 164.010 jurisdiction is that it
22 was given to courts essentially to reach out and to take
23 jurisdiction over property, not persons. Even in the fact
24 of trust proceedings, if we want to go against a Trustee,
25 we've got to serve personal service and get a citation on

1 the Trustee because this Court has limited jurisdiction,
2 and rightly so under the relaxed standards that are set
3 forth under 155.010, which is simply a mailing. There's no
4 clear understanding of whether or not any of these
5 individuals would even receive it under the relaxed
6 standard, but, in this case, we know that they didn't
7 receive it at all because they weren't even noticed up.
8 And the ones that were noticed up, in hindsight, when they
9 realized, oops we forgot, we didn't get that other
10 beneficiary's consent and therefore we have the invalidity
11 now of the first amendment, we're going to try to serve her
12 under 155.010 and send her notice through the mail at --
13 not upon the original motion but upon their Opposition to
14 the Motion to Dismiss.

15 And, therefore, Your Honor, I would respectfully
16 request that this matter be dismissed entirely for lack of
17 jurisdiction.

18 THE COURT: Okay. I'm still trying to understand
19 where they have an error in this amendment.

20 MR. BARNEY: Okay.

21 THE COURT: I'm looking at Article 11.

22 MR. BARLOW: It's Article 14, Section 6 is where
23 the change of situs provision.

24 THE COURT: Okay.

25 MR. BARNEY: It's on page 14-7.

1 THE COURT: So the issue is not changing the
2 Trustee? That's not what you're arguing about?

3 MR. BARNEY: The --

4 THE COURT: Your argument changing the situs?

5 MR. BARNEY: The change in Trustee could
6 potentially be --

7 THE COURT: Because that doesn't require it --

8 MR. BARNEY: No. That could be potentially
9 changed by Mr. Lehnardt but it -- but the fact is it could
10 not be changed under an amendment unless the change in
11 situs had occurred in that regard.

12 So, his ability to appoint a Trustee in Nevada to
13 work over an Alaska trust where they're not licensed to do
14 so would obviously most likely be invalidated even under
15 that theory of whether or not he could appoint a Trustee.
16 Apparently, they're appointing a Nevada Trustee based upon
17 a defection -- or a defective change in situs which was --
18 never occurred.

19 THE COURT: Yeah.

20 MR. BARNEY: And they did it --

21 THE COURT: So --

22 MR. BARNEY: -- in the same amendment.

23 THE COURT: So: Except as expressly provided in
24 here in the situs of this agreement or any sub trust
25 established hereunder, may be changed by the unanimous

1 consent of all of the beneficiaries then eligible to
2 receive mandatory or discretionary distributions.

3 MR. BARNEY: Okay.

4 THE COURT: So isn't that just the children?

5 MR. BARNEY: What's that?

6 THE COURT: That's the children and who else?

7 MR. BARNEY: Well the --

8 THE COURT: In other words, Christopher -- the two
9 -- who -- to the children. Who else is entitled to
10 mandatory or discretionary --

11 MR. BARLOW: No. So the children are the
12 mandatory dis --

13 THE COURT: Right.

14 MR. BARLOW: Beneficiaries.

15 THE COURT: Right.

16 MR. BARLOW: But the trust also provides that
17 their spouses and their decedents are discretionary
18 beneficiaries of the --

19 THE COURT: Okay.

20 MR. BARLOW: -- trust. So that would be the
21 discretionary -- the spouses and decedents.

22 THE COURT: Okay. So --

23 MR. BARLOW: Those -- that would be encompassed in
24 the all.

25 THE COURT: Okay.

1 MR. BARLOW: And --

2 THE COURT: Okay.

3 MR. BARLOW: If I just -- really briefly. I'd
4 just add also on that point then -- so the position of the
5 Protector who took this and, of course, he's very hesitant
6 to come and say, yeah it looks like I made a mistake, but
7 upon review, it does look like we're missing some of the
8 beneficiaries.

9 And then the second clause of that sentence that
10 you just started says with all the -- consent of all the
11 beneficiaries, then, comma, and then it also says:

12 With the consent of the then acting Protector --
13 obviously, he consented, and the Trustee that are involved.
14 We had an absence of Trustee actually at that point because
15 the previous Trustee had resigned about three months
16 earlier.

17 THE COURT: Okay.

18 MR. BARLOW: So technically what should have
19 happened, it appears now in retrospect, is a new Alaska-
20 based Trustee should have been appointed in the interim for
21 the purpose of consenting to the change of situs to Nevada
22 so that that Trustee could get the advice of counsel that
23 was called for in that paragraph to make sure that there
24 were no adverse consequences. So that appears to be the
25 step that was missing and Mr. Lehnardt's going to have to

1 go back to the drawing board to determine whether he needs
2 to go now go appoint an Alaska Trustee and whether it's
3 then advisable to then move it down here to Nevada if all
4 beneficiaries consent to do so.

5 THE COURT: Okay.

6 MR. BARLOW: So that's position on that.

7 THE COURT: Great.

8 MR. SOLOMON: Your Honor, I'd like to spell the
9 word sandbag because this is the first time I've heard the
10 issue that's been raised. It's not in their brief, despite
11 what Mr. Barney just said. They've never taken the
12 position that Taria [phonetic] was a beneficiary. We
13 understood she was divorced and first time I've ever heard
14 it.

15 THE COURT: And she was the wife of --

16 MR. SOLOMON: Supposedly.

17 THE COURT: -- the grandson?

18 MR. BARNEY: No. She was the wife of Chris Davis.

19 THE COURT: But she's not the one with the life
20 insurance policy?

21 MR. BARNEY: No.

22 MR. BARLOW: No.

23 MR. BARNEY: She is the wife of Chris Davis and
24 was during this period.

25 MR. SOLOMON: Where is the evidence of that, Your

1 Honor? There is none. They didn't file an affidavit.
2 They didn't file -- they didn't even raise this issue in
3 any of their pleadings. Total sandbag to wait until you
4 get here and say: Hold on. We all made a mistake that
5 we've been acting on for over a year.

6 I guess their whole theory now is that since she
7 didn't consent to this amendment and jurisdiction here that
8 the whole first amendment is invalid. Chris is --
9 Christopher is not the --

10 MR. HOOD: Trust Advisor.

11 MR. SOLOMON: Trust Advisor, no --

12 MR. HOOD: Investment Advisor.

13 MR. SOLOMON: Investment Advisor. He's been
14 wrongfully investing and holding and making all of the
15 decisions for this trust for the last year.

16 THE COURT: There's apparently no Trustee.

17 MR. SOLOMON: This -- apparently there's no
18 Trustee. Dunham has been administering this for the last
19 year without -- it's all a big mistake because Taria
20 [phonetic] didn't join in this thing, there's not even a
21 line for her signature in the agreement. Mr. Lehnardt
22 prepared it, contrary to counsel's statement, he did have
23 an opinion of counsel in Missouri, Mr. Bresolan [phonetic],
24 say that it was valid and parties went off and proceeded on
25 that basis. That is a -- as I said, a complete sandbag

1 without any support from the record other than counsel
2 standing up here and making this argument at this late date
3 without any ability to check the facts or determine what
4 the heck happened here.

5 THE COURT: Yeah, because the change in situs it's
6 done by Christopher Davis, Caroline Davis, and the copy I
7 have -- I don't see the signature of Winfield [phonetic]
8 but --

9 MR. SOLOMON: It is there. There's a signature
10 page in there that --

11 THE COURT: Was there a signature page because I
12 didn't it?

13 MR. SOLOMON: I think it's the last page.

14 MR. HOOD: it's one more page over.

15 MR. SOLOMON: One more page over. It just sort of
16 does a little w. That's the way he signs on everything.
17 Actually there are two agreements. I can point to both
18 exhibits that are signed the same way that accomplish the
19 same thing.

20 Let me put this in context though. We had a
21 petition to assume jurisdiction over this trust to confirm
22 Dunham as the Directed Trustee, to confirm Christopher
23 individually and as manager of FHT Holdings, LLC, as the
24 Investment Trust Advisor, which I guess they're going to
25 contend that's not valid either because we'll hear that was

1 created in this last year, we also wanted to confirm
2 Stephen Lehnardt as the Distribution Trustee -- I'm sorry.
3 Distribution Trust Advisor and the Trust Protector. And we
4 wanted an order for immediate disclosure of the books,
5 records, and information from Chris -- Christopher
6 regarding over \$2,000,000 of loans that were taken against
7 a \$35,000,000 policy that's owned by the trust and
8 apparently now signed by Dunham, who they're claiming isn't
9 the Trustee, to a wholly owned LLC called FHT Holdings
10 which is managed by Chris.

11 These funds were paid out or leant to Christopher
12 individually, to Christopher as the Trustee of the Beatrice
13 B. Davis Family Revocable Trust, which is another trust in
14 Missouri, Your Honor, which my client is a 50 percent
15 beneficiary and a co-Trustee of but can't get any
16 information from her brother, calling for an outright
17 distribution. And we have now filed a proceeding in
18 Missouri with respect to that one because he won't give us
19 any information with respect to that trust or why
20 distributions haven't been sent to us because mom died over
21 three years ago. And then, finally, monies were leant to
22 Chris again as manager of the Davis Family Office, LLC.
23 They won't give us information with respect to that entity.

24 The Family Heritage Trust's main asset is this
25 Ashley Cooper [phonetic] life insurance policy for

1 \$35,000,000 according to notice that it was on the life of
2 Cheryl Davis [phonetic], a former wife of Chris's and
3 there's a \$4,000,000 line of credit on it.

4 Article 8, Section 1 of this Trust says: Upon
5 these death, the trust is to split into two equal shares,
6 one for Caroline and one for Chris and his issue and his
7 spouse. So that's interesting all by itself. That was
8 supposed to have already happened. I don't know if that's
9 happened or not because we can't get information as to
10 whether that trust is even split into two separate shares
11 and Christopher, his wife, if he had one, and wouldn't even
12 be beneficiaries of our share.

13 Now, under Section 8 -- Article 8, Section 4,
14 Caroline is entitled to distributions of income and
15 principal in the discretion of the Trustee but has never
16 received a dime and this is extremely significant, Your
17 Honor. Article 12, Section 4 says:

18 The trust's books and records along with all trust
19 documentation shall be available and open at all
20 reasonable times to the inspection of the trust
21 beneficiaries and their representatives.

22 Despite the fact that those books and records are
23 supposed to be open to beneficiaries, including one who is
24 the -- currently the sole beneficiary of her share, we
25 spent over three months the last quarter of 2012 trying to

1 get information and documents from Christopher and his
2 counsel, Harriet Rowland [phonetic], regarding who got the
3 loan proceeds or the benefit of those, what was the purpose
4 of those loans, how were those loan proceeds being used,
5 what's the repayment terms of the loans, has any repayment
6 been made, was there any collateral given, is there a
7 collateral agreement, is there a promissory note, is there
8 a loan agreement? We were virtually stonewalled. Just
9 stonewalled. We're not getting anything with respect to
10 this even though Caroline is entitled to half of this and
11 half of everything to the entities that these were leant to
12 with Chris's control.

13 Now the Alaska Trust Company was the original
14 Trustee. Stephen Lehnardt was the original Trust
15 Protector. On August 2nd, 2011, Mr. Lehnardt, in his
16 capacity pursuant to the provisions of the trust, removed
17 Alaska Trust Company and appointed Alaska USA Trust
18 Company. And then two years later -- a little over two
19 years later, on December 5th, 2013, Alaska USA Trust Company
20 resigned and Mr. Lehnardt appointed Dunham Trust Company in
21 Reno and I think he has the right to do that, period.

22 On February 24th, 2014, which is Exhibit 7 to the
23 Motion to Dismiss, Alaska USA -- that may be a different
24 document than Your Honor was looking at.

25 THE COURT: Okay.

1 MR. SOLOMON: Oh Exhibit 7 is a Motion to Dismiss.
2 I'm sorry.

3 [Colloquy between Mr. Solomon and Mr. Hood]

4 MR. SOLOMON: It's Exhibit 5, Your Honor, I
5 misspoke.

6 THE COURT: Okay.

7 MR. SOLOMON: And actually it's Exhibit 1 to the
8 Motion -- Christopher D. Davis' Motion to Dismiss Exhibit
9 1. It's called Release -- Resignation, Release,
10 Acknowledgement, Consent, and Indemnification Agreement.

11 THE COURT: Right.

12 MR. SOLOMON: And the parties to that, contrary to
13 what counsel said, include Alaska USA, which is the present
14 Trustee, Dunham Trust, Mr. Lehnardt, Chris, Caroline,
15 Winfield [phonetic], and they all executed this changing
16 the situs -- [indiscernible] to change the situs of the
17 trust from Alaska to Nevada, purports to be signed by all
18 of the beneficiaries and it consented to Mr. Lehnardt
19 amending the trust to change the situs, applicable law,
20 provisions required by Dunham, and other amendments.

21 And then after this document was signed, then Mr.
22 Lehnardt went out and got his advice of counsel, got a
23 written opinion, and prepared the first amendment. And
24 that was dated on February 24th, 2014 and that, again, was
25 executed by Mr. Lehnardt, Dunham Trust, and specifically

1 proved by Chris, Caroline, and Winfield [phonetic] and
2 that's the document that names Chris as the Investment
3 Trust Advisor under NRS 163.5543, as a fiduciary under
4 163.554, that names Mr. Lehnardt as the Distribution Trust
5 Advisor under 164.5537, a fiduciary under 163.554, and then
6 it -- so basically it's Chris individually or as manager of
7 an LLC to be owned by the trust full power to manage
8 investments and reinvestments of the trust and to direct
9 Dunham with respect to the same.

10 And then, finally, on March 28th, 2014, Dunham,
11 presumably at the direction of Chris, because that's what
12 he was up -- empowered to do, created a -- the FHT Holdings
13 Company, naming Chris as manager and thereafter assigning
14 the policy to the LLC which Chris is now managing.

15 So, you know, we start off with the resumption of
16 where we were that the first amendment to the trust is
17 presumed valid and there was contrary to this new claim
18 that there was another beneficiary out there that didn't
19 sign, it was never challenged until this moment, other than
20 to say likely that we have a burden to prove validity.
21 That's all they said in their moving papers, Your Honor.
22 We have the power -- we have the obligation to prove
23 validity. They didn't specify one reason in that or in his
24 Reply that -- did we see a Reply?

25 MR. HOOD: No. He just did a Joinder in

1 opposition to --

2 MR. SOLOMON: I don't think he --

3 MR. HOOD: -- our petition.

4 MR. SOLOMON: Counsel alluded to a Reply. I
5 haven't seen a Reply.

6 THE COURT: I saw your Reply.

7 MR. SOLOMON: Yes. But I have not seen a Reply by
8 Mr. Barney --

9 THE COURT: I have no Reply from Mr. Baney.

10 MR. SOLOMON: -- but he alluded in his argument
11 that, you know, they specified the grounds for invalidity
12 in this motion and then reinforced them in the Reply. They
13 didn't. All they said is: We have the burden to prove the
14 validity of the first amendment before we could move
15 forward and our response was: Well, take a look at NRS
16 47.250 subsection 18(c). There's a rebuttal for resumption
17 that it's valid. And then we said: Nobody has suggested
18 any particular grounds of invalidity.

19 And then I pointed out that Chris, who is the only
20 person challenging it, expressly consented to it. Not
21 once, but twice in two different documents you just looked
22 at. So how can he raise it? I don't think he can even
23 raise this issue he's now trying to raise with respect to
24 some other party, especially when he consented to it and
25 then he took repeated actions.

1 THE COURT: Well the only person who I'm going to
2 have standing would be Taria [phonetic]?

3 MR. SOLOMON: I believe she would, assuming she is
4 a beneficiary. I don't even know that, Your Honor. I was
5 advised that he wasn't married at that time, at the time
6 the thing was done. He may be married now, so I gave her
7 notice now, but, at this time, I don't know that they were
8 and none of their documents suggest that she was a
9 beneficiary. I'm hearing it for the first time and that's
10 why I stood up and said sandbag because that's what's
11 happening here.

12 Now, I think the Court had jurisdiction at least
13 over Dunham, irrespective of this issue, but based upon the
14 record that you have now, anything in front of you, all of
15 the beneficiaries can sign -- consented to it. This isn't
16 evidence standing up here and saying this.

17 Nevada situs, our Court can clearly give Nevada
18 jurisdiction over this. It's Nevada situs under the first
19 amendment, Nevada law applies, you have a Nevada Trustee.
20 That's sufficient all by itself under 164.010 because it's
21 doing business here. We know books and records are kept
22 here because contrary to counsel's argument, the first
23 thing we did, Your Honor, is go to Dunham Trust to try to
24 get this information. We're not stupid and they said: We
25 don't have it. We have to get it from Chris. They

1 supplied us what they have. They gave us a few indications
2 of what's going on, but they don't have the information.
3 They do have books and records of the trust though,
4 including they have possession of the policy and recently
5 transferred, as I said, to FHT Holdings Company, a Nevada
6 LLC.

7 164.010 is met. There's in personam jurisdiction
8 over these people that are in front of you. 163.5555 says
9 that Chris and Stephen Lehnardt submitted to this
10 jurisdiction by accepting their appointments as Investment
11 and Distribution Advisors. Again, FHT Holdings, LLC, is a
12 Nevada entity doing business here. There's no question we
13 have in personam jurisdiction.

14 And then this argument that Alaska Trust and
15 Alaska USA are somehow necessary or indispensable parties,
16 it's ridiculous. When is a former Trustee a necessary or
17 indispensable party in any proceeding that you are not
18 asking for any relief from them? And the answer -- are you
19 telling me every time I have to do something that some
20 event occurred even though they're not being asked to be
21 held responsible for it, I have to name them because they
22 have some input? Well of course not. It's ridiculous.

23 Caroline is not objecting in her petition to any
24 act or admission of Alaska or Alaska USA. She seeks no
25 relief against them. Chris, in one capacity or another,

1 received all of the money that we're talking about here.
2 He has all of the information we seek about the use and the
3 status of those loans to him. The former Trustees are not
4 being placed in the position by our petition where they
5 need to protect their interest and no one's being exposed
6 to multiple liability or prejudice, except for us, if the
7 Court doesn't take jurisdiction and require him to produce
8 this information because Alaska Trustees are not subject to
9 jurisdiction here and I don't think Alaska has jurisdiction
10 over Chris. There's no reason to believe he does. This is
11 the jurisdiction.

12 And [indiscernible] process our statute, 164,
13 specifically tells you you serve it under 155.010 and we
14 complied in that regard.

15 THE COURT: Now Mr. Barlow didn't address this
16 separate issue, but his issue with respect to the petition
17 was that it doesn't specifically state a claim against Mr.
18 Lehnardt. It doesn't --

19 MR. SOLOMON: I'll over that, Your Honor.

20 THE COURT: -- allege -- okay. Mr. Barlow, you'll
21 get a chance to --

22 MR. SOLOMON: As Your Honor knows, there wasn't an
23 action until recently that we amended Chapter 164 in 1999
24 [indiscernible]. Prior to that date, you used to file a
25 petition to ask the Court to assume jurisdiction and you

1 weren't allowed to do anything more and all the Court could
2 do at the initial point was to determine whether sufficient
3 connections nexus to Nevada were sufficient to assume
4 jurisdiction and confirm the Trustees. Then you had to
5 file separate petitions for any type of relief.

6 So in 1999, we amended the statute and added
7 subsection 2 that says that at the same time that you file
8 the petition to assume jurisdiction under subsection 1, you
9 may file additional petitions for relief. So the law
10 hasn't changed. In order to get jurisdiction over a trust,
11 you have to assume jurisdiction over the trust and confirm
12 the Trustees or the fiduciaries. That's what we're doing.
13 I think it may have been defective if we didn't try and
14 confirm. That's all we're doing is confirming the Trustees
15 or the Trust Protectors and the fiduciaries at this point.

16 One other additional petition request for relief
17 which is to ask for an order that Chris, who is in
18 possession of all of this information that belongs to the
19 trust, produce it to the beneficiary to whom the trust says
20 is entitled to it explicitly.

21 So, it is true that we're not seeking any
22 additional relief against Stephen Lehnardt at this time but
23 it's appropriate to confirm him in the role that's done.
24 That gives the Court interim jurisdiction over this and if
25 we can't get the information that we need from Chris for

1 any reason, we certainly intend to seek it from Mr.
2 Lehnardt and if we have to use another petition to do that
3 or discovery to do that, we will and that's appropriate to
4 do and we don't have to re-file a petition to confirm him
5 as Trust Protector, which is a step that we are
6 accomplishing now.

7 We know that Mr. Lehnardt was intimately involved
8 in these loan transactions and we put that in our Reply,
9 Your Honor. There's designation after designation in his
10 time sheet showing that he was involved in these
11 transactions. So he is presumable a repository of some
12 information. We just wanted to get it from the horse's
13 mouth, the person who actually got the use -- apparent use
14 and benefit of these proceeds first, which is Chris, and
15 hopefully that will satisfy our inquiry. But if we have
16 additional issues and have additional claims of Mr.
17 Lehnardt, then we if are, based upon a Court order,
18 confirming him as the fiduciary, we can proceed.

19 THE COURT: Okay.

20 MR. SOLOMON: So that's where I think we are, Your
21 Honor.

22 There is nothing before this Court at this point
23 that in any way, shape, or form shows the petition that we
24 didn't [sic] file is not proper in every respect. They had
25 the burden to come in here to show that anything was

1 invalid and they haven't done that. There's no evidence
2 before this Court at this point and I -- you know, if this
3 were, in fact, invalid, what if -- there would be a, you
4 know, I haven't had a lot of time to ruminate about this
5 because I'm just hearing it for the first time, but there
6 would be a constructive trust here anyway. This has been
7 operated -- this trust has been in Nevada for over a year
8 and huge transactions, including the assignment of a
9 \$35,000,000 policy all taken place. There's a whole slew
10 of actions that have taken place by the very people who are
11 now coming here and saying: Oh, well, it's all invalid.
12 Without presenting any evidence whatsoever of why it's not
13 true or is in fact true and I think our petition should be
14 granted, Your Honor.

15 THE COURT: Okay. Thank you. Mr. Barlow.

16 MS. RENWICK: Your Honor, if I may?

17 THE COURT: Yes.

18 MS. RENWICK: Charlene Renwick on behalf of Dunham
19 Trust.

20 THE COURT: Yes.

21 MS. RENWICK: I do have to agree with Mr. Solomon
22 with respect to the issue, the invalidity of Dunham Trust
23 being appointed as the successor Trustee. I don't believe
24 that issue was clearly addressed in the moving papers, to
25 which extent, I did not respond to it as I didn't

1 understand that was that argument that was going --

2 THE COURT: Okay.

3 MS. RENWICK: -- to be raised before the Court
4 today.

5 To the extent that the Court is being asked to
6 determine whether the assignment to Nevada was valid, I
7 request that the hearing be continued and that a briefing
8 schedule be provided to the parties so that we can properly
9 address that --

10 THE COURT: Okay.

11 MS. RENWICK: -- address that issue.

12 THE COURT: Good point. Thank you. All right.

13 Mr. Barlow.

14 MR. BARLOW: Your Honor, just briefly because I
15 think our role in this is really [indiscernible] here, but,
16 again, the issues about the validity of the first amendment
17 were raised to us just yesterday for the first time and I
18 went through the analysis of the trust and it appears that
19 there are problems with the first amendment as far as the
20 consents that were necessary to do that. That's where that
21 came from.

22 Our concern, if the Court is tending toward taking
23 jurisdiction of this in some manner, 164.010 only requires
24 the Court to assume jurisdiction -- or excuse me, to
25 confirm the appointment of the Trustee. If the Court wants

1 to confirm the appointment of Dunham Trust Company, then
2 you have a Trustee that you confirmed the appointment of in
3 this matter.

4 There -- in his capacity as the Trust Protector
5 and Trust Advisor, he may be a fiduciary under the statute,
6 not necessarily the Trustee in that situation. And Mr.
7 Solomon himself just said, in response to the question, I
8 don't need to bring in these two Alaskan Trustees because
9 I'm not bringing any claims against the Alaska Trustees.
10 Well why is he trying to bring Mr. Lehnardt into this as
11 well if he's not bringing any claims -- admittedly not
12 bringing any claims against Mr. Lehnardt?

13 THE COURT: Oh but he might be amending this if
14 the issue is that Mr. Lehnardt screwed up moving it.

15 MR. BARLOW: Maybe. But that's the point. If he
16 has a claim, bring the claim and bring us in.

17 Court Right.

18 MR. BARLOW: But he -- don't bring us in and make
19 us sit here and wait --

20 THE COURT: Doesn't he have a point that when you
21 move a trust, even if ineffectually you move a trust,
22 Dunham takes it over, they start operating, they assumed
23 they are responsible as a Trustee. There's all this
24 activity that goes on. Doesn't this Court in this
25 jurisdiction, doesn't that give me jurisdiction? I mean, I

1 -- you know, you're kind of somewhat changing your position
2 on this, but originally it seemed -- it was my
3 understanding that it was conceded that even though your
4 client had come to this jurisdiction, you weren't -- didn't
5 think that they necessarily needed to be in the case, but
6 that the case was -- it was properly in this jurisdiction.

7 MR. BARLOW: If the first amendment is valid --

8 THE COURT: Okay.

9 MR. BARLOW: -- and were going to be treated as
10 valid, then we're operating under 163, which sets out what
11 happens in these [indiscernible] jurisdiction, things of
12 that nature. It does say that a --

13 THE COURT: Well doesn't this Court have to assume
14 it's valid absent some evidence? I don't know who Taraja
15 [phonetic] is or however her name is pronounced.

16 MR. BARLOW: Taria [phonetic].

17 THE COURT: Taria [phonetic]? Okay.

18 MR. BARLOW: Right. And --

19 THE COURT: She's not mentioned anywhere.

20 MR. BARLOW: And, at this point, we --

21 THE COURT: Doesn't seem to be a big life
22 insurance policy on her life. Who is she?

23 MR. BARLOW: By the representations of counsel,
24 that's -- as Ms. Renwick just suggested, maybe there may be
25 further briefing required to get that information in front

1 of the Court and sort that particular issue out.

2 If we're going to assume that's it valid and go
3 back to the original argument we had originally made in our
4 Opposition, when Mr. Lehnardt accepted the employment as
5 Distribution Trust Advisor under NRS 163, yes that -- the
6 statute does say he submits to the jurisdiction of Nevada.
7 I've submitted to the jurisdiction of Nevada. Your Clerk
8 has submitted to the jurisdiction of Nevada. It doesn't
9 mean that we are -- that you have to observe that
10 jurisdiction over them in this case just to make us sit
11 around with no claims being brought against us.

12 THE COURT: Okay.

13 MR. BARLOW: And that's the point. Just because
14 there is jurisdiction in Nevada, doesn't mean you should
15 exercise it over Mr. Lehnardt where there are no current
16 claims against him or they're not --

17 THE COURT: Because, I mean, it did --

18 MR. BARLOW: -- asking for any information from
19 him.

20 THE COURT: -- occur to me that -- well, nothing
21 is mentioned but just out of -- is that a grounds to
22 dismiss it or does it just require more definite statement?

23 MR. BARLOW: I'm just saying in this situation
24 that Mr. Lehnardt doesn't need to be a party to this case.

25 THE COURT: Okay.

1 MR. BARLOW: Okay. Until an order or something --

2 THE COURT: At this point?

3 MR. BARLOW: That's --

4 THE COURT: If I said -- if there is this issue
5 that this was somehow missed, --

6 MR. BARLOW: Right.

7 THE COURT: -- that there's a central person --

8 MR. BARLOW: If there --

9 THE COURT: -- missed --

10 MR. BARLOW: -- are claims brought against him, if
11 -- some other basis to bring something that would make him
12 be necessary to this action, then revisit that when that
13 arises, but as it stands right now, there's no point in
14 making him just come here and hang out and --

15 THE COURT: Okay.

16 MR. BARLOW: -- sit around and wait to be -- to
17 have a claim brought against him.

18 THE COURT: Understood. Okay. Mr. Barney.
19 Interesting.

20 MR. BARNEY: Thank you, Your Honor.

21 You didn't really give me a chance to answer the
22 question that you had asked previously about the trust and
23 changing the trust situs. You began to read it. It says:

24 Expressly as under Article 14, Section 6, changing
25 the trust situs, such as expressly provided herein, the

1 situs of this agreement or any sub trust established
2 hereunder may be changed by the unanimous consent of
3 all of the beneficiaries.

4 It didn't say the majority consent. It said the
5 unanimous consent, okay, of all of the beneficiaries.

6 Then eligible to receive mandatory and
7 discretionary distributions of net income.

8 Now, there have been allegations of sandbagging
9 and yet my Motion to Dismiss hit on this very issue right
10 out of the gate. I said: In order for this Court to take
11 proper jurisdiction over this case, there was a condition
12 precedent that had to have been met and it wasn't met. And
13 therefore, the Trust Protector could not amend this
14 instrument by written action to change the references to
15 [indiscernible] references to such new situs or the law of
16 such new situs and take such action as may be required to
17 conform the terms of the agreement of this trust.

18 That's exactly what happened in this amendment.
19 It was changed purportedly without the consent of
20 Christopher Davis' wife who was a discretionary distributee
21 and included as part of the all requirement.

22 Now, the person that drafted that amendment, the
23 purported first amendment, has already indicated that it
24 was defective. He stands here today and says: It was
25 defective. Okay. He didn't get all of the necessary

1 requirements of all of the beneficiaries.

2 THE COURT: But your client acted on it.

3 MR. BARNEY: The --

4 THE COURT: Your client did things based on the
5 assumption that he had this new role and this amendment.
6 He accepted the role.

7 MR. BARNEY: And under what legal theory would --
8 with him without independent counsel would he be able to
9 effectuate a document that by the terms of the trust
10 couldn't be effectuated? He clearly isn't res judicata
11 because there was no prior proceeding. Okay. And our
12 courts have been very clear about the res judicata
13 requirements.

14 Under this situation, Chris was clearly under a
15 mistake that this could have been done and it wasn't -- the
16 irony of this whole situation is for an argument of res
17 judicata even to have grounds, they would have had to
18 follow the statute in Alaska that was succinctly set forth
19 in my moving papers. They could have gone to the Court.
20 They could have ratified the amendment in Alaska. They
21 didn't. And, in fact, when it became defective, what Mr.
22 Solomon offered was a document dated February 2014, after
23 his admitted document that he put in before where the
24 Trustee resigned on December 5th. Okay?

25 So on December 5th, 2013, Mr. Solomon alleges in

1 his moving papers, in his petition, and also in his
2 documentary evidence that he provided to the Court that
3 this Trustee had in fact resigned two months earlier. And
4 so, what I did in my Motion to Dismiss, was I put the Court
5 on notice of that very fact. Not to hide the document, but
6 to actually put the Court on notice that this document was
7 invalid. It couldn't have been signed by a Trustee who had
8 already advocated and had no authority to sign on that
9 amendment.

10 And with that, --

11 THE COURT: But Mr. Solomon's constructive trust
12 point is that if that has to be litigated, whether this was
13 a valid amendment or not, doesn't the Court still have to
14 take jurisdiction so that we can litigate that? Because
15 your clients acted on it. They've moved -- they turned
16 this over to Dunham. They're acting as the Trustee.
17 There's all this activity taking place based on the
18 assumption that it was valid. You client's now coming in
19 and saying all that activity I took was based on a void
20 document. So everything I have done is wrong. Mr.
21 Lehnardt screwed up because he did this wrong.

22 MR. BARNEY: Your Honor, I'm --

23 THE COURT: Everything we've done is wrong. We
24 shouldn't have taken any of the action that we took. It's
25 all wrong, but you can't sue us for it because it's all

1 wrong.

2 MR. BARNEY: Your Honor, on numerous occasions --

3 THE COURT: It doesn't make any sense.

4 MR. BARNEY: On numerous occasions we've had the
5 Court look at situations that were admittedly all wrong and
6 we've had to go back and we've had to fix it. And, in this
7 case, it needs to go back to Alaska so that they can fix
8 it.

9 I've got no objection. If the Alaska Trustee
10 that's appointed with power and authority that hasn't
11 already resigned wants to change the situs and they have an
12 opinion from their counsel, you know, in Alaska that moving
13 it down to Nevada is a great idea and that we get all of
14 the signatures on that paper that are requisite under the
15 terms of the trust, I've got no objection to this Court in
16 a situation like that taking jurisdiction but that didn't
17 occur in this situation and the idea that --

18 THE COURT: But we've already got a Nevada --

19 MR. BARNEY: -- things have happened --

20 THE COURT: -- Trustee acting as Nevada Trustee on
21 the assumption they were acting under a valid amendment and
22 change of situs. They're acting on that. They're taking
23 instruction apparently from your client.

24 MR. BARNEY: Your Honor, they were an independent
25 professional fiduciary that has the right to counsel before

1 they sign any document. I'm not going to propose that --

2 THE COURT: Right, but --

3 MR. BARNEY: -- my client had any duty --

4 THE COURT: -- the fact is there --

5 MR. BARNEY: -- or Mr. Lehnardt, for that matter,
6 had any duty to Dunham Trust --

7 THE COURT: I'm not saying they did.

8 MR. BARNEY: -- for their --

9 THE COURT: I'm saying that doesn't this Court
10 have jurisdiction because Dunham is operating under the
11 assumption hat these guys gave me a document that they
12 reported -- they purported to me and hold out to me as
13 being valid because -- how -- they were told. That's your
14 point is shouldn't I have a chance to argue this and brief
15 this because nobody told me there is a wife out there
16 somewhere?

17 MR. BARNEY: So, if I'm understanding you
18 correctly, you're saying that Dunham should be appointed as
19 a Trustee to respond to the 25,000 out of the \$2.2 million
20 that occurred up in Alaska? Because that's really what
21 they're asking. They're saying that, in essence, there was
22 \$25,000 supposedly in a loan and they're asking for the
23 information regarding that \$25,000 loan supposedly that
24 Dunham received and the irony of the whole situation of --
25 and that was argued, and which is completely false, is

1 supposedly it was received by FHT Holdings that supposedly
2 was established by -- actually it was established by
3 Dunham. Okay? Dunham is the sole member of that.

4 Now, the idea of -- you said earlier -- you said:
5 Well I don't know Taria [phonetic]. Your Honor, with all
6 respect, I don't think that matters that you know whether,
7 you know, the identity of Taria [phonetic]. The fact is
8 that they knew who Taria [phonetic] was. They put her on
9 the notice for their Opposition and ironically that didn't
10 even -- that wasn't even proper under 155.010 because she
11 wasn't given the requisite period. So they knew about her
12 because they were the ones that noticed her. Not us,
13 originally, because the fact is she was -- she wasn't made
14 a party to this but she was a beneficiary that required her
15 consent in order for this Court to take jurisdiction.

16 And the idea that things have happened, Your
17 Honor, things happen all of the time. That's what courts
18 are about and that's what litigation is all about. It's
19 attempting to right the wrongs that have happened, but, in
20 this case, by assuming jurisdiction over a trust amendment
21 that is clearly defective by the drafter's own words -- by
22 the drafter's own counsel they've admitted is defective in
23 order to transfer jurisdiction, I think this Court would be
24 stepping outside of what authority it's been given under
25 164.010 to take jurisdiction.

1 And if the Court is inclined to want us to brief
2 this, I'd be more than happy to brief this, Your Honor. In
3 fact, when you were newly called, I actually prepared a
4 brief for you on this very issue with regard to interim
5 jurisdiction on an in personam matter and I'd be happy to
6 reply to this and indicate, but clearly this matter must be
7 dismissed under the facts that we have. Even the evidence
8 that's been presented actually lends credence to the fact
9 that this amendment was improper.

10 THE COURT: Okay. Well my problem here is that
11 everybody relied on it as being proper and Dunham has been
12 acting in good faith on the assumption that they're the
13 properly appointed Trustee, that situs has been changed and
14 they're the proper Trustee. And now you're coming in here
15 and saying: Oh, I, as Trust Protector, or whatever -- or
16 Trust Investment Protector, whatever your client's role is,
17 whatever Mr. Lehnardt's role is, we were all wrong. We did
18 this wrong because we forgot Chris was married.

19 MR. BARNEY: Your Honor, you're --

20 THE COURT: Ah, what?

21 MR. BARNEY: -- assuming that my client even had
22 counsel to know what was going on in this and the fact is
23 he --

24 THE COURT: I'm not saying he did have counsel or
25 didn't have counsel.

1 MR. BARNEY: He was not. He was --

2 THE COURT: He knows whether he's married or not.

3 MR. BARNEY: He does know whether he's married or
4 not, but the fact is he is not --

5 THE COURT: I have no affidavit in front of me
6 telling me that he is married, that the marriage was valid
7 at the time, that she was therefore entitled to take under
8 -- I mean, I don't have anything. All I have is the
9 Trustee that's acting apparently based on instructions from
10 you and Mr. Lehnardt dealing with this trust having been
11 told we have a valid change of situs. They're acting in
12 reliance on it. They assume they've got proper authority
13 and now you're coming in here and saying: All of those
14 things I've told you to do in the last year, I was wrong.
15 I never should have told you to do those things because I
16 don't have a valid authority. Ooops. My bad. Let's go
17 back to Alaska and fix it.

18 Well okay. Go back to Alaska and fix it, but, in
19 the meantime, I think I have jurisdiction of -- at least as
20 put by Mr. Solomon, at least we have the constructive trust
21 because it's here. There is --

22 MR. BARNEY: Your Honor, --

23 THE COURT: -- action you've taken here.

24 MR. BARNEY: Your Honor, I would respectfully
25 disagree in the fact that we have demonstrated the actual

1 drafter of the amendment has admitted that it is incorrect.

2 Now, if somebody wants to bring an action for
3 unjust reliance or they want to bring a claim of that sort,
4 let them do it in the proper fashion and serve them
5 pursuant to Rule 4 to get proper jurisdiction over these
6 parties.

7 However, we have the truth and the fact that they
8 noticed up the wife. They clearly knew who the wife was.
9 They're the first ones who noticed the wife in this
10 proceeding. She was the wife. She was the wife during the
11 period of the reported first amendment. The drafter of
12 that amendment has admitted that neither an acting Trustee
13 nor all of the beneficiaries that were required did sign
14 and that it was invalid.

15 Any presumption that would be there has been
16 clearly rebutted. We have the person that drafted it. We
17 have the notice that was given by Caroline to Taria
18 [phonetic] on -- and it wasn't timely notice, which would
19 invalidate, you know, the proceeding in that regard, but
20 they did know who she was and the idea that we sandbagged
21 when they came up with the notice first, really shocks the
22 conscience, Your Honor, because --

23 THE COURT: Okay. Mr. Solomon, do you have
24 anything further to say on your Petition to -- for
25 Jurisdiction?

1 MR. SOLOMON: Just one. I'll give you another
2 basis to get where we need to go.

3 They just admitted their own downfall. Taria
4 [phonetic] was given notice of this proceeding timely and
5 she's had the full time to do it and she has never
6 objected. She has never raised that she didn't know about
7 this, didn't consent to it, was even married at the time.
8 Now she --

9 THE COURT: Isn't she in Japan? Is she in Japan?

10 MR. SOLOMON: No. I think that's --

11 THE COURT: Somebody's in Japan.

12 MR. SOLOMON: Windield [phonetic].

13 THE COURT: Windield [phonetic] is in Japan.

14 MR. SOLOMON: Yeah, but -- and I don't know where
15 --

16 MR. HOOD: California or Missouri.

17 THE COURT: Oh. It's the person with the two
18 houses.

19 MS. HOOD: Taria [phonetic].

20 MR. SOLOMON: Yeah. This --

21 THE COURT: Okay.

22 MR. SOLOMON: -- is Christopher's -- step up, the
23 father, who is apparently --

24 THE COURT: okay.

25 MR. SOLOMON: -- now married. I don't know how

1 long he's been married. I've never -- this is the first
2 time.

3 But the point is she has full notice, never
4 objected. She's waived her objection by not appearing and
5 not making that. The only person here objecting is the
6 person who acted upon it and never, ever raised this issue
7 until you got in front of this Court on this hearing.

8 THE COURT: Okay. Well, I guess my concern is --
9 and this is -- where I think counsel has indicated that
10 they would like a chance to be heard on this and brief
11 this. I think I have to take jurisdiction over this at
12 least under a theory of constructive trust because they've
13 been relying on this in good faith thinking they're
14 operating properly and all of a sudden they're being told,
15 by the very people who made that representation to them,
16 oops, my bad, even though my sister knew I was married, she
17 who -- I don't know if she had legal counsel telling her
18 anything, but I didn't have legal counsel -- or at least
19 his attorney says he didn't have legal counsel, so I didn't
20 know -- needed it. So she went and hired and is now saying
21 maybe I messed up here. I mean, but everybody's been
22 relying on that.

23 MR. SOLOMON: And you don't have the evidence.
24 All you have --

25 THE COURT: And acting on it.

1 MR. SOLOMON: -- is a statement.
2 THE COURT: And so I just --
3 MR. SOLOMON: There is no evidence at this point
4 other than --
5 THE COURT: It's -- I just have a real problem
6 with this --
7 MR. SOLOMON: -- that.
8 THE COURT: -- in saying that there's no
9 jurisdiction because there's no Trustee in Alaska. The
10 only Trustee is here.
11 MR. SOLOMON: It's true.
12 THE COURT: And that's my problem with this -- you
13 have a trust with no Trustee.
14 MR. BARNEY: Your Honor, --
15 THE COURT: If I follow your theory, Mr. Barney,
16 you have a trust with no Trustee and --
17 MR. BARNEY: And the Court --
18 THE COURT: -- and your client has been acting
19 without any authority and this is -- I mean, do you
20 seriously want us to go down that road?
21 MR. BARNEY: I do, Your Honor, and under the terms
22 of the trust --
23 THE COURT: Okay.
24 MR. BARNEY: -- if the Protect --
25 THE COURT: I think that -- doesn't that expose

1 your client to huge liability?

2 MR. BARNEY: If the Protector does not appoint a
3 Trustee, they can come together unanimously and they can
4 appoint a Trustee.

5 The whole idea is -- what you're saying, Your
6 Honor, is: Okay, well, there would be no Trustee. Do you
7 know how many trusts come before us where there is no
8 Trustee and the courts appoint a Trustee? Numerous times.

9 THE COURT: Okay.

10 MR. BARNEY: A Trustee dies. There is no Trustee
11 for a certain period.

12 THE COURT: Yeah, but there's no Trustee in
13 Alaska. We have a Trustee.

14 MR. BARNEY: The Trustee could be appointed in
15 Alaska by the very terms of the --

16 THE COURT: Okay. Okay.

17 MR. BARNEY: -- trust.

18 THE COURT: I'm done, Mr. Barney. I'm done.

19 MR. BARNEY: Okay.

20 THE COURT: I'm going to take jurisdiction over
21 this trust and I'm going to confirm Dunham as Trustee.

22 But we have this issue, which they've asked for
23 the opportunity because this is not well developed. I
24 think it raises some issues. I have a real concern about
25 Mr. Lehnardt because I didn't really see anything

1 specifically alleged about him in this pleading. But Mr.
2 Barlow's got a point. However -- we now know what the
3 issue is so I think we need a more definite statement.

4 So I'm granting Mr. Barlow alternative relief in
5 the form of I think he's entitled to -- his client is
6 entitled to a more definite statement as to what it is
7 allegedly Mr. Lehnardt already did. I think we all know
8 it, but he's entitled to have it in a pleading. So, Mr.
9 Lehnardt's Motion is granted with alternative relief. We
10 need a more definite statement as to what it is Mr.
11 Lehnardt allegedly did.

12 MR. BARLOW: If anything.

13 THE COURT: If anything. He's entitled to that.
14 So it's -- we need a more definite statement because right
15 now we don't have anything about him. He's right. We
16 need something about him.

17 So, the issue is Chris. My problem here, even if
18 it's just constructive trust because Dunham's acting -- as
19 I've indicated, I believe in a good faith reliance on what
20 everybody told them that here's a valid change of situs and
21 trust amendment, I think that -- I appreciate this argument
22 that it's all invalid and so Mr. Davis can't be sued, but
23 my problem with that is he's been acting here, I have to
24 assume because stuff has been going on, apparently giving
25 instruction to Dunham and I just think that means he's

1 consented to the jurisdiction of this Court.

2 MR. SOLOMON: Yeah, I mean, he's de facto at a
3 minimum.

4 THE COURT: Yeah.

5 MR. BARNEY: Your Honor, did you say that Mr.
6 Davis could be sued?

7 THE COURT: Yeah. I think he's consented to the
8 jurisdiction of this Court.

9 MR. BARNEY: And in what capacity are you making -
10 - I just want to be clear for the record?

11 THE COURT: He has been acting in -- under the
12 assumption, and I understand your argument that it may all
13 be void. If so, it all gets unwound some other way but I
14 think I have to -- I have to take jurisdiction at this
15 point and we have to have some form in which this can be
16 litigated. I respectfully don't think it's Alaska. I
17 think it's here because you've got a Trustee appointed
18 here. Everybody is acting on this assumption and your
19 client, perhaps in as good of faith as Dunham, has been
20 acting under the assumption that he had a role and he had
21 authority to take certain actions. He considered the
22 jurisdiction of this Court by acting on it. So I think
23 he's -- I think he can be sued here. He's consented to it
24 by acting --

25 MR. BARNEY: And when you say he can be sued, are

1 you saying in his individual capacity or are you saying --

2 THE COURT: That's -- what -- I keep forgetting.

3 It was Investor?

4 MR. BARNEY: Investment Trust Advisor.

5 THE COURT: Investment Trust Advisor, yes.

6 MR. BARNEY: Because they're not asking to sue
7 him. At least the pleadings I read, they're not asking to
8 sue him. They're asking for information, Your Honor, and
9 your -- you jumped to the he can be sued --

10 THE COURT: No. I'm saying I've got jurisdiction
11 over it. So in his capacity as this Investment Trust
12 Advisor, if they want to get records and stuff from him,
13 then fine. He's consented to act in that capacity in this
14 jurisdiction. Until it's shown that, in fact, he didn't
15 have that capacity, I think he's consented because he acted
16 on it.

17 MR. BARNEY: Okay. So, just to be clear, you're
18 assuming jurisdiction under 164.010 in what capacity? Over
19 Dunham Trust?

20 THE COURT: Dunham Trust because there's a trust -
21 - they -- the trust has been -- they took the role of
22 Trustee acting on an assumption that they were properly
23 appointed and they had a valid amendment and the change of
24 situs. They acted on that. Your client also acted on it
25 in his role of Investment Trust Advisor.

1 So, to the extent that that's a role that he was
2 acting in, then I think we've got like a jurisdiction over
3 him in that role because everybody was acting on that. If
4 it's proven that, in fact, that's all void because Taria
5 [phonetic] was entitled to be a signator, if we've got
6 evidence on that and it's proven, then we've got a whole
7 different problem, but we've got to litigate that somewhere
8 and I don't think it's Alaska because this trust isn't in
9 Alaska. Everybody is operating on the assumption that it
10 is here. If it shouldn't be here, that's a problem for
11 another day.

12 MR. BARNEY: And just as a point of clarification,
13 when you're indicating that you have jurisdiction, are you
14 -- is the extent of your ruling that you have jurisdiction
15 or that you're just taking jurisdiction over Dunham and --
16 because there's relief that's been requested and I'm --

17 MR. SOLOMON: And I'd like to get to that, Your
18 Honor.

19 THE COURT: I know.

20 MR. SOLOMON: You've already -- you indicated that
21 you're going to assume jurisdiction over Chris, --

22 THE COURT: Right.

23 MR. SOLOMON: -- and --

24 THE COURT: In his role of Investment Trust
25 Advisor.

1 MR. SOLOMON: I understand. Again, Article 12,
2 Section 4 of the trust, and nobody disputes this, says,
3 quote:

4 The trust books and records along with all trust
5 documents shall be available and open at all reasonable
6 times for the inspection of the trust beneficiaries and
7 the representatives.

8 He has not opposed that he has these type of
9 records in his possession. In fact, I know he does because
10 Harriet Rowland [phonetic] told me that she had them, that
11 he had produced them to her. She was prepared to turn them
12 over to me when he said: No, don't give them anything.

13 THE COURT: Okay. Okay. So you asked for
14 multiple types of relief. The petition is to assume
15 jurisdiction over this trust. I'm going to assume
16 jurisdiction over this trust, even though, as I said, it's
17 without prejudice to litigate whether it's actually validly
18 moved. If it's not, then, you know, we've got a problem,
19 but it appears that everybody is acting on the assumption
20 that it's here. So we have to take jurisdiction.

21 So, then I'm assuming jurisdiction over
22 Christopher Davis as Investment Trust Advisor, which is the
23 specific relief requested.

24 Stephen Lehnardt, I agree, I would also have
25 jurisdiction for the same analysis, but the problem is we

1 don't have a statement as to what it is he's allegedly
2 done. So, for the moment, I'm not taking jurisdiction over
3 him because we need a more definite statement in order to
4 say whether or not we can go forward against Mr. Lehnardt.

5 And then to confirm the Dunham Trust Company as
6 Directed Trustee, for now, it appears they're acting in
7 good faith on what was represented to them to be a valid
8 amendment and change of situs. They have been acting, as
9 far as I can tell, nobody's raised that that they would
10 have any notice. So, I think we have to confirm them.
11 They're the Trustee, until it's proven that maybe they
12 shouldn't be because unknown to them there was a wife out
13 there.

14 Okay. And then the final thing was immediate
15 disclosure of documents and information from the Investment
16 Trust Advisor.

17 MR. BARNEY: And what would that include with
18 regard to those records? Clearly Alaska Trust has the
19 records of their tenure as Trustee for the \$2.2 million.

20 THE COURT: Right.

21 MR. BARNEY: And they're not a party to this
22 action. So --

23 THE COURT: It's what Mr. -- it's what he has in
24 his role as Investment Trust Advisor. That's it.

25 MR. BARNEY: Because they've alleged \$25,000 was

1 handled between Dunham and Christopher Davis in Nevada.

2 THE COURT: If that's not -- you know, if that's
3 not in his possession, it's not in his possession. It's
4 only what's -- what he's got in his possession.

5 MR. SOLOMON: I'll prepare the --

6 THE COURT: So you'll prepare the order. Okay?

7 MR. SOLOMON: -- order, Your Honor.

8 THE COURT: Thank you.

9 MR. SOLOMON: And I'll submit it to counsel.

10 THE COURT: And we'll be -- like I said, this is
11 all without prejudice to actually litigate and give, you
12 know, Dunham a chance to --

13 MR. BARNEY: Did you --

14 THE COURT: -- lay out this whole issue.

15 MR. BARNEY: So to understand this correctly --
16 and I'd like to sign off on the order, Your Honor.

17 THE COURT: Sure. Absolutely. Mr. Solomon --

18 MR. BARNEY: If that's --

19 THE COURT: -- always very good about that.

20 MR. BARNEY: But you're giving jurisdiction
21 subject to a determination of whether or not --

22 THE COURT: Yeah. It's without prejudice to --
23 allergies. Without prejudice to raise the issue.

24 MR. SOLOMON: I understand.

25 MR. BARNEY: Of the validity --

1 THE COURT: Properly --

2 MR. BARNEY: -- of the first amendment. Is that
3 correct?

4 THE COURT: Properly with evidence and -- because
5 right now we don't even have an affidavit from Tarjia
6 [phonetic] and who knows? I don't have her -- Taria
7 [phonetic].

8 MR. BARNEY: Taria [phonetic].

9 THE COURT: Thank you.

10 And Dunham. You know, surely they'd like to be
11 heard. So, you know, it's without prejudice on that issue,
12 but right now, everybody is acting on it, so --

13 MR. SOLOMON: Thank you, Your Honor.

14 MS. RENWICK: Thank you, Your Honor.

15 THE COURT: -- we'll litigate it all later. Thank
16 you all for coming in.

17 THE CLERK: Is this [indiscernible]?

18 THE COURT: Yes. We're keeping it. Mr. Solomon,
19 specifically just for the record, Mr. Solomon specifically
20 requested that this be handled from its inception here and
21 nobody's objected to that part. So we're --

22 MR. BARNEY: Yeah. I'd prefer that, Your Honor.

23 THE COURT: You got it. Okay. We're good. We'll
24 see you guys back here.

25 MR. BARNEY: If the Court has jurisdiction.

1 THE COURT: Exactly. Subject to your right to say
2 I don't have jurisdiction.

3

4

PROCEEDING CONCLUDED AT 11:15 A.M.

5

* * * * *

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

13

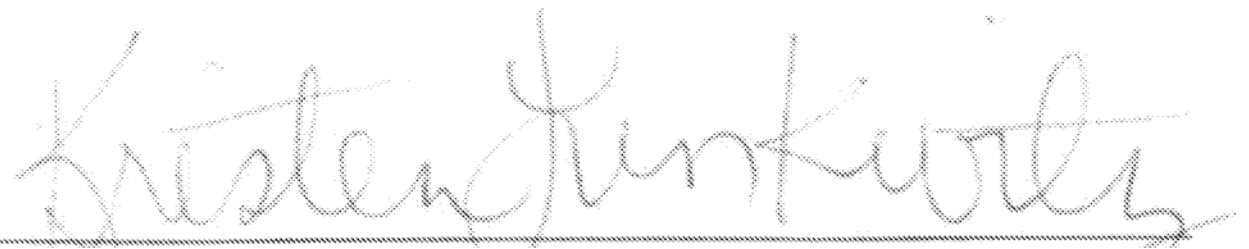
14

15

16

17

18

19 

20

21

22 KRISTEN LUNKWITZ

23 INDEPENDENT TRANSCRIBER

24

25

1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3 CHRISTOPHER D. DAVIS,

4
5 Petitioner

6 vs.

7
8 THE EIGHTH JUDICIAL DISTRICT
9 COURT OF THE STATE OF NEVADA,
10 IN AND FOR THE COUNTY OF CLARK,
11 AND THE HONORABLE JUDGE
12 GLORIA J. STURMAN,

13 Respondent

14 and

15 CAROLINE DAVIS,

16 Real Party in Interest

Case No.: P-15-083867-1
District Court Case No.
P-15-083867-1
Electronically Filed
Oct 08 2015 01:44 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

17 **PETITIONER'S APPENDIX**
18 **VOLUME III**

19 Respectfully Submitted,
20 ROLAND LAW FIRM

21 
22 Harriet H. Roland, Esq.
23 Nevada Bar No. 5471
24 2470 E. St. Rose Pkwy, Ste. 105
25 Henderson, NV 89074
26 Telephone: (702) 452-1500
27 Facsimile: (702) 920-8903
28 hroland@rolandlawfirm.com
Attorney for Christopher D. Davis

Respectfully Submitted,
ANTHONY L. BARNEY, LTD.

21 
22 Anthony L. Barney, Esq.
23 Nevada Bar No. 8366
24 3317 W. Charleston Blvd., Suite B
25 Las Vegas, NV 89102
26 Telephone: (702) 438-7878
27 Facsimile: (702) 259-1116
28 office@anthonybarney.com
Attorney for Christopher D. Davis

ALPHABETICAL
TABLE OF CONTENTS

Volume Number	Exhibit Number	Title of Document	Page Numbers
VIII	33	Addendum to and Withdrawal of Certain Statements Referenced in the: (1)Objection to Petition for Reconsideration of the Order dated May 19, 2015 Re: Petition to Assume Jurisdiction Over the Beatrice B. Davis Family Heritage Trust dated July 28, 2000, as Amended on February 24, 2014, to Assume Jurisdiction Over Christopher D. Davis as Investment Trust Advisor, Stephen K. Lehnardt as Distribution Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for Immediate Disclosure of Documents and Information from Christopher D. Davis; and Counterpetition for Sanctions; (2)Amendment and Supplement to Counterpetition for Sanctions; and (3)Motion to Amend or Modify Order Pursuant to NRCP 60(b)(3)	001322-001357
V	16	Amendment and Supplement to Counter Petition for Sanctions	000780-000794
V	14	Case Appeal Statement	000684-000700
VIII	26	Christopher D. Davis' Motion for Protective Order and to Modify or Quash the Subpoena	001185-001221
II	2	Christopher D. Davis' Motion To Dismiss Pursuant To NRCP (12)(b) And NRCP 19 and Errata	000283-000308
VII	25	Christopher D. Davis' Opposition to Caroline Davis' Motion to Amend or Modify Order Pursuant to NRCP 60(b)(3)	001139-001184
VIII	37	Christopher D. Davis' Opposition to Caroline Davis' Motion to Strike Christopher D. Davis' Arguments and Requests for Relief in his Reply to Caroline D. Davis' Objection to Petition for Reconsideration in Excess of Thirty (30) Pages as	001373-001390

1			the Reply Violates EDCR 2.20 and Countermotion	
2			for Leave to File a Reply in Excess of Thirty (30)	
3			Pages	
4	VII	23	Christopher D. Davis' Reply to Caroline Davis'	000987-
5			Objection to Petition for Reconsideration of the	001118
6			Order Dated May 19, 2015 re: Petition to Assume	
7			Jurisdiction over the Beatrice B. Davis Family	
8			Heritage Trust Dated July 28, 2000, as Amended	
9			on February 24	
10	VIII	31	Christopher D. Davis' Reply to Caroline Davis'	001307-
11			Opposition to His Motion for a Protective Order	001313
12			and to Quash or Modify Subpoena	
13	III	6	Christopher D. Davis' Reply to Caroline Davis'	000350-
14			Opposition to his Motion to Dismiss Pursuant to	000375
15			NRCP (12)(b) and NRCP 19	
16	IX	42	Court Minutes dated September 16, 2015	001539-
17				001541
18	IX	43	Court Minutes dated September 30, 2015	001542-
19				001543
20	VI	21	Declaration Of Christopher D. Davis	000977-
21				000979
22	V	11	Declaration of Tarja Davis	000478-
23				000483
24	IX	45	Email from Anthony L. Barney, Esq. dated	0001549-
25			October 7, 2015	0001551
26	VIII	36	Errata to Christopher D. Davis' Petition to Stay	001368-
27			Discovery Until the August 19, 2015 Hearing on	001372
28			Motion for Reconsideration or in the Alternative,	
			Petition for Protective Order from Discovery by	
			Subpoena	
	VI	22	Errata To Petition For Reconsideration Of The	000980-
			Order Dated May 19, 2015 To Assume	000986
			Jurisdiction Over The Beatrice B. Davis Family	
			Heritage Trust, Dated July 28, 2000, As Amended	
			On February 24, 2014, To Assume Jurisdiction	
			Over Christopher D. Davis As Investment Trust	
			Advisor, Stephen K. Lehnardt As Distribution	
			Trust Advisor, To Confirm Dunham Trust	
			Company As Directed Trustee, And For	

1			Immediate Disclosure Of Documents And	
2			Information From Christopher D. Davis	
3	V	17	Motion to Amend or Modify Order Pursuant to	000795-
4			NRCP 60(b)(3)	000836
5	IX	39	Motion to Compel Attendance at Deposition and	001477-
6			Motion for Sanctions	001520
7	VI	20	Motion to Compel Harriet Roland, Esq., to	000897-
8			Produce Documents Responsive to Subpoena	000976
9			Duces Tecum; and for Attorneys' Fees and Costs	
10	VI	19	Motion to Hold Christopher D. Davis in Contempt	000871-
11			and for Attorneys' Fees and Costs	000896
12	VIII	30	Motion to Strike Christopher D Davis' Arguments	001300-
13			and Requests for Relief in his Reply to Caroline D	001306
14			Davis' Objection to Petition for Reconsideration in	
15			Excess of Thirty (30) Pages as the Reply Violates	
16			EDCR 2.20	
17	V	13	Notice of Appeal	000679-
18				000683
19	III	9	Notice of Entry of Order	000440-
20				000445
21	VIII	34	Notice of Non-Appearance of Christopher D.	001358-
22			Davis	001363
23	VIII	35	Notice of Partial Withdrawal of Petition and	001364-
24			Partial Withdrawal of Petition to Stay Discovery	001367
25			until the August 19th, 2015 Hearing on Motion for	
26			Reconsideration or in the Alternative, Petition for	
27			Protective Order from Discovery by Subpoena	
28	IV	10	Notice of Petition and Petition for Reconsideration	000446-
			of the Order Dated May 19, 2015 Re: Petition to	000477
			Assume Jurisdiction over the Beatrice B Davis	
			Family Heritage Trust Dated July 28, 2000, as	
			Amended on February 24, 2014, to Assume	
			Jurisdiction over Christopher D Davis as	
			Investment Trust Advisor, Stephen K. Lehnardt as	
			Distribution Trust Advisor, to Confirm Dunham	
			Trust Company as Directed Trustee, and for	
			Immediate Disclosure of Documents and	
			Information from Christopher D Davis	
	V	18	Notice of Petition and Petition to Stay Discovery	000837-

1			until the August 19, 2015 Hearing on Motion for	000870
2			Reconsideration	
3	V	15	Objection to Petition for Reconsideration of the	000701-
4			Order Dated May 19, 2015 Re: Petition to Assume	000779
5			Jurisdiction Over the Beatrice B. Davis Family	
6			Heritage Trust Dated July 28, 2000, as Amended	
7			on February 24, 2014, to Assume Jurisdiction	
8			Over Christopher D. Davis as Investment Trust	
9			Advisor, Stephen K. Lehnardt as Distribution	
10			Trust Advisor to Confirm Dunham Trust Company	
11			as Directed Trustee and for Immediate Disclosure	
12			of Documents and Information from Christopher	
13			D. Davis; AND Counter Petition for Sanctions	
14	VIII	27	Objection to Petition to Stay Discovery Until the	001222-
15			August 19, 2015 Hearing on Motion for	001238
16			Reconsideration or in the Alternative, Petition for	
17			Protective Order From Discovery by Subpoena	
18	VIII	28	Opposition to Caroline Davis' Motion to Compel	001239-
19			Harriet H. Roland, Esq. to Produce Documents	001285
20			Responsive to Subpoena Duces Tecum; Counter	
21			Motion to Quash	
22	VII	24	Opposition to Caroline Davis' Motion to Hold	001119-
23			Christopher D. Davis in Contempt and for	001138
24			Attorney's Fees and Costs	
25	VIII	29	Opposition to Christopher D. Davis' Motion for a	001286-
26			Protective Order and to Quash or Modify	001299
27			Subpoena	
28	II	3	Opposition to Christopher D. Davis' Motion to	000309-
			Dismiss Pursuant to NRCP(12)(b) and NRCP 19	000321
	II	4	Opposition to Petition to Assume Jurisdiction over	000322-
			the Beatrice B. Davis Family Heritage Trust, dated	000325
			July 28, 2000, as Amended on February 24, 2014;	
			to Assume Jurisdiction over Christopher D. Davis	
			as Investment Trust Advisor and Stephen K.	
			Lehnardt as Distribution Trust Advisor; to	
			Confirm Dunham Trust Company as Directed	
			Trustee; and for Immediate Disclosure of	
			Documents and Information from Christopher D.	
			Davis, and Limited Joinder to Christopher D.	

1			Davis's Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19	
2	III	8	Order	000435-
3				000439
4	I and II	1 (pts 1 and 2)	Petition to Assume Jurisdiction over the Beatrice B. Davis Family Heritage Trust Dated July 28 2000 as Amended on February 24, 2014; to Assume Jurisdiction Over Christopher D Davis As Investment Trust Advisor and Stephen K Lehnardt as Distribution Trust Advisor; to Confirm Dunham Trust Company as Directed Trustee; and for Immediate Disclosure of Documents and Information from Christopher D Davis	000001-
5				000282
6				
7				
8				
9				
10	IX	44	Proposed Order Regarding September 30, 2015 Hearing	001544-
11				001548
12	IX	41	Reply to Christopher D. Davis Opposition to Caroline Davis' Motion to Hold Christopher D. Davis in Contempt and for Attorneys' Fees and Costs	001533-
13				001538
14				
15	II	5	Reply to Opposition to Petition to Assume Jurisdiction Over the Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014; to Assume Jurisdiction Over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution Trust Advisor; to Confirm Dunham Trust Company as Directed Trustee; and for Immediate Disclosure of Documents and Information from Christopher D. Davis and Limited Joinder to Christopher D. Davis's Motion to Dismiss Pursuant to NRCP12(b) and NRCP 19	000326-
16				000349
17				
18				
19				
20				
21				
22				
23	V	12	Response to Petition for Reconsideration	000484-
24				000678
25	VIII	32	Supplement to Objection to Petition for Reconsideration of the Order Dated May 19 2015 RE: Petition to Assume Jurisdiction over the Beatrice B Davis Family Heritage Trust Dated July 28, 2000 as Amended on February 24, 2014 to Assume Jurisdiction Over Christopher D. Davis	001314-
26				001321
27				
28				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

		as investment trust advisor, Stephen K. Lehnardt as Distribution Trust Advisor to Confirm Dunham Trust Company as Directed Trustee, and for Immediate Disclosure of Documents and Information from Christopher D. Davis and Counter Petition for Sanctions	
IX	40	Supplement to Opposition to Caroline Davis' Motion to Hold Christopher D. Davis in Contempt and for Attorney's Fees and Costs	001521-0001532
IX	38	Transcript of Proceedings All Pending Motions, September 2, 2015	001391-001476
III	7	Transcript of Proceedings Motion to Dismiss: Motion on Christopher Davis' Motion to Dismiss Pursuant to NRCP 12(B) and NRCP 19; Petition to Assume Jurisdiction over the Beatrice B. Davis Family Trust, Assume Jurisdiction over Christopher David as Investment Trust Advisor and Stephen K. Lehnardt as Distribution Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for Immediate Disclosure of Documents and Information from Christopher D. Davis April 22, 2015	000376-000434

CHRONOLOGICAL
TABLE OF CONTENTS

Volume Number	Exhibit Number	Title of Document	Page Numbers
I and II	1 (pts 1 and 2)	Petition to Assume Jurisdiction over the Beatrice B. Davis Family Heritage Trust Dated July 28 2000 as Amended on February 24, 2014; to Assume Jurisdiction Over Christopher D Davis As Investment Trust Advisor and Stephen K Lehnardt as Distribution Trust Advisor; to Confirm Dunham Trust Company as Directed Trustee; and for Immediate Disclosure of Documents and Information from Christopher D Davis	000001-000282
II	2	Christopher D. Davis' Motion To Dismiss Pursuant To NRCP (12)(b) And NRCP 19 and Errata	000283-000308
II	3	Opposition to Christopher D. Davis' Motion to Dismiss Pursuant to NRCP(12)(b) and NRCP 19	000309-000321
II	4	Opposition to Petition to Assume Jurisdiction over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as Amended on February 24, 2014; to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution Trust Advisor; to Confirm Dunham Trust Company as Directed Trustee; and for Immediate Disclosure of Documents and Information from Christopher D. Davis, and Limited Joinder to Christopher D. Davis's Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19	000322-000325
II	5	Reply to Opposition to Petition to Assume Jurisdiction Over the Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014; to Assume Jurisdiction Over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution Trust Advisor; to Confirm Dunham Trust Company as Directed Trustee; and for Immediate Disclosure of Documents and Information from	000326-000349

1			Christopher D. Davis and Limited Joinder to	
2			Christopher D. Davis's Motion to Dismiss	
3			Pursuant to NRCP12(b) and NRCP 19	
4	III	6	Christopher D. Davis' Reply to Caroline Davis'	000350-
5			Opposition to his Motion to Dismiss Pursuant to	000375
6			NRCP (12)(b) and NRCP 19	
7	III	7	Transcript of Proceedings Motion to Dismiss:	000376-
8			Motion on Christopher Davis' Motion to Dismiss	000434
9			Pursuant to NRCP 12(B) and NRCP 19; Petition to	
10			Assume Jurisdiction over the Beatrice B. Davis	
11			Family Trust, Assume Jurisdiction over	
12			Christopher David as Investment Trust Advisor	
13			and Stephen K. Lehnardt as Distribution Trust	
14			Advisor, to Confirm Dunham Trust Company as	
15			Directed Trustee, and for Immediate Disclosure of	
16			Documents and Information from Christopher D.	
17			Davis April 22, 2015	
18	III	8	Order	000435-
19				000439
20	III	9	Notice of Entry of Order	000440-
21				000445
22	IV	10	Notice of Petition and Petition for Reconsideration	000446-
23			of the Order Dated May 19, 2015 Re: Petition to	000477
24			Assume Jurisdiction over the Beatrice B Davis	
25			Family Heritage Trust Dated July 28, 2000, as	
26			Amended on February 24, 2014, to Assume	
27			Jurisdiction over Christopher D Davis as	
28			Investment Trust Advisor, Stephen K. Lehnardt as	
			Distribution Trust Advisor, to Confirm Dunham	
			Trust Company as Directed Trustee, and for	
			Immediate Disclosure of Documents and	
			Information from Christopher D Davis	
	V	11	Declaration of Tarja Davis	000478-
				000483
	V	12	Response to Petition for Reconsideration	000484-
				000678
	V	13	Notice of Appeal	000679-
				000683
	V	14	Case Appeal Statement	000684-

1				000700
2	V	15	Objection to Petition for Reconsideration of the Order Dated May 19, 2015 Re: Petition to Assume Jurisdiction Over the Beatrice B. Davis Family Heritage Trust Dated July 28, 2000, as Amended on February 24, 2014, to Assume Jurisdiction Over Christopher D. Davis as Investment Trust Advisor, Stephen K. Lehnardt as Distribution Trust Advisor to Confirm Dunham Trust Company as Directed Trustee and for Immediate Disclosure of Documents and Information from Christopher D. Davis; AND Counter Petition for Sanctions	000701-000779
3				
4				
5				
6				
7				
8				
9				
10	V	16	Amendment and Supplement to Counter Petition for Sanctions	000780-000794
11	V	17	Motion to Amend or Modify Order Pursuant to NRCP 60(b)(3)	000795-000836
12				
13	V	18	Notice of Petition and Petition to Stay Discovery until the August 19, 2015 Hearing on Motion for Reconsideration	000837-000870
14				
15	VI	19	Motion to Hold Christopher D. Davis in Contempt and for Attorneys' Fees and Costs	000871-000896
16	VI	20	Motion to Compel Harriet Roland, Esq., to Produce Documents Responsive to Subpoena Duces Tecum; and for Attorneys' Fees and Costs	000897-000976
17				
18	VI	21	Declaration Of Christopher D. Davis	000977-000979
19				
20	VI	22	Errata To Petition For Reconsideration Of The Order Dated May 19, 2015 To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, As Amended On February 24, 2014, To Assume Jurisdiction Over Christopher D. Davis As Investment Trust Advisor, Stephen K. Lehnardt As Distribution Trust Advisor, To Confirm Dunham Trust Company As Directed Trustee, And For Immediate Disclosure Of Documents And Information From Christopher D. Davis	000980-000986
21				
22				
23				
24				
25				
26				
27				
28	VII	23	Christopher D. Davis' Reply to Caroline Davis' Objection to Petition for Reconsideration of the	000987-001118

1			Order Dated May 19, 2015 re: Petition to Assume	
2			Jurisdiction over the Beatrice B. Davis Family	
3			Heritage Trust Dated July 28, 2000, as Amended	
4			on February 24	
5	VII	24	Opposition to Caroline Davis' Motion to Hold	001119-
6			Christopher D. Davis in Contempt and for	001138
7			Attorney's Fees and Costs	
8	VII	25	Christopher D. Davis' Opposition to Caroline	001139-
9			Davis' Motion to Amend or Modify Order	001184
10			Pursuant to NRCP 60(b)(3)	
11	VIII	26	Christopher D. Davis' Motion for Protective Order	001185-
12			and to Modify or Quash the Subpoena	001221
13	VIII	27	Objection to Petition to Stay Discovery Until the	001222-
14			August 19, 2015 Hearing on Motion for	001238
15			Reconsideration or in the Alternative, Petition for	
16			Protective Order From Discovery by Subpoena	
17	VIII	28	Opposition to Caroline Davis' Motion to Compel	001239-
18			Harriet H. Roland, Esq. to Produce Documents	001285
19			Responsive to Subpoena Duces Tecum; Counter	
20			Motion to Quash	
21	VIII	29	Opposition to Christopher D. Davis' Motion for a	001286-
22			Protective Order and to Quash or Modify	001299
23			Subpoena	
24	VIII	30	Motion to Strike Christopher D Davis' Arguments	001300-
25			and Requests for Relief in his Reply to Caroline D	001306
26			Davis' Objection to Petition for Reconsideration in	
27			Excess of Thirty (30) Pages as the Reply Violates	
28			EDCR 2.20	
	VIII	31	Christopher D. Davis' Reply to Caroline Davis'	001307-
			Opposition to His Motion for a Protective Order	001313
			and to Quash or Modify Subpoena	
	VIII	32	Supplement to Objection to Petition for	001314-
			Reconsideration of the Order Dated May 19 2015	001321
			RE: Petition to Assume Jurisdiction over the	
			Beatrice B Davis Family Heritage Trust Dated	
			July 28, 2000 as Amended on February 24, 2014	
			to Assume Jurisdiction Over Christopher D. Davis	
			as investment trust advisor, Stephen K. Lehnardt	
			as Distribution Trust Advisor to Confirm Dunham	

1			Trust Company as Directed Trustee, and for	
2			Immediate Disclosure of Documents and	
3			Information from Christopher D. Davis and	
4	VIII	33	Counter Petition for Sanctions	
5			Addendum to and Withdrawal of Certain	001322-
6			Statements Referenced in the: (1)Objection to	001357
7			Petition for Reconsideration of the Order dated	
8			May 19, 2015 Re: Petition to Assume Jurisdiction	
9			Over the Beatrice B. Davis Family Heritage Trust	
10			dated July 28, 2000, as Amended on February 24,	
11			2014, to Assume Jurisdiction Over Christopher D.	
12			Davis as Investment Trust Advisor, Stephen K.	
13			Lehnardt as Distribution Trust Advisor, to	
14			Confirm Dunham Trust Company as Directed	
15			Trustee, and for Immediate Disclosure of	
16			Documents and Information from Christopher D.	
17			Davis; and Counterpetition for Sanctions;	
18			(2)Amendment and Supplement to Counterpetition	
19			for Sanctions; and (3)Motion to Amend or Modify	
20			Order Pursuant to NRCP 60(b)(3)	
21	VIII	34	Notice of Non-Appearence of Christopher D.	001358-
22			Davis	001363
23	VIII	35	Notice of Partial Withdrawal of Petition and	001364-
24			Partial Withdrawal of Petition to Stay Discovery	001367
25			until the August 19th, 2015 Hearing on Motion for	
26			Reconsideration or in the Alternative, Petition for	
27			Protective Order from Discovery by Subpoena	
28	VIII	36	Errata to Christopher D. Davis' Petition to Stay	001368-
			Discovery Until the August 19, 2015 Hearing on	001372
			Motion for Reconsideration or in the Alternative,	
			Petition for Protective Order from Discovery by	
			Subpoena	
	VIII	37	Christopher D. Davis' Opposition to Caroline	001373-
			Davis' Motion to Strike Christopher D. Davis'	001390
			Arguments and Requests for Relief in his Reply to	
			Caroline D. Davis' Objection to Petition for	
			Reconsideration in Excess of Thirty (30) Pages as	
			the Reply Violates EDCR 2.20 and Countermotion	
			for Leave to File a Reply in Excess of Thirty (30)	
			Pages	

1	IX	38	Transcript of Proceedings All Pending Motions, September 2, 2015	001391-001476
2	IX	39	Motion to Compel Attendance at Deposition and Motion for Sanctions	001477-001520
3	IX	40	Supplement to Opposition to Caroline Davis' Motion to Hold Christopher D. Davis in Contempt and for Attorney's Fees and Costs	001521-001532
4	IX	41	Reply to Christopher D. Davis Opposition to Caroline Davis' Motion to Hold Christopher D. Davis in Contempt and for Attorneys' Fees and Costs	001533-001538
5	IX	42	Court Minutes dated September 16, 2015	001539-001541
6	IX	43	Court Minutes dated September 30, 2015	001542-001543
7	IX	44	Proposed Order Regarding September 30, 2015 Hearing	001544-001548
8	IX	45	Email from Anthony L. Barney, Esq. dated October 7, 2015	0001549-0001551
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Cheryl Davis
5403 West 134 Terrace, Unit 1525
Overland Park, KS 66209

And
514 West 26th Street, #3E
Kansas City, Missouri 64108

Ace Davis
c/o Winfield B. Davis
Skyline Terrace Apts.
930 Figueroa Terr. Apt. 529
Los Angeles, California 90012-3072

And
514 West 26th Street, #3E
Kansas City, Missouri 64108

1 Registered Agent Solutions, Inc. First Class US Mail
2 Registered Agent for FHT Holdings, LLC,
3 a Nevada Limited Liability Company
4 4625 West Nevso Drive, Suite 2
Las Vegas, Nevada 89103

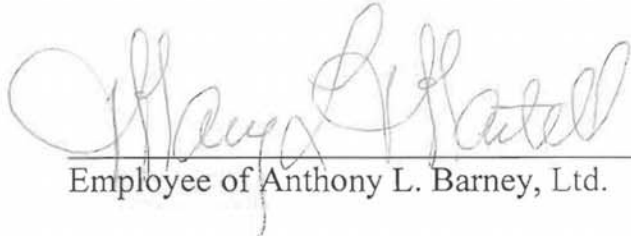
5 JONATHAN W. BARLOW, ESQ. Hand Delivered
6 CLEAR COUNSEL LAW GROUP
7 50 Stephanie Street, Suite 101
8 Henderson, Nevada 89012
9 Jonathan@clearcounsel.com
Attorneys for Stephen K. Lenhardt

10 Mark Solomon, Esq. Hand Delivered
11 Joshua Hood, Esq.
12 **SOLOMON DWIGGINS & FREER, LTD.**
13 9060 W. Cheyenne Ave.
14 Las Vegas, NV 89129
Attorney for Petitioner Caroline Davis

15 DUNHAM TRUST COMPANY Hand Delivered
16 SHANNA CORESSAL, CTFA
17 c/o Charlene Renwick, Esq.
18 Lee, Hernandez, Landrum & Garofalo
19 7575 Vegas Drive, #150
Las Vegas, Nevada 89128

20 Honorable Judge Sturman Hand Delivered
21 Dept. 26, Eighth Judicial Dist. Court
22 Regional Justice Center
23 200 Lewis Ave.
Las Vegas, NV 89101

24
25
26
27
28



Employee of Anthony L. Barney, Ltd.



EXHIBIT 6



CLERK OF THE COURT

HARRIET H. ROLAND, ESQ.
NV Bar No. 5471
ROLAND LAW FIRM
2470 E. St. Rose Pkwy, Ste. 105
Henderson, NV 89074
Telephone: (702) 452-1500
Facsimile: (702) 920-8903
hroland@rolandlawfirm.com

ANTHONY L. BARNEY, ESQ.
Nevada Bar No. 8366
TIFFANY S. BARNEY, ESQ.
Nevada Bar No. 9754
ANTHONY L. BARNEY, LTD.
3317 W. Charleston Blvd., Suite B
Las Vegas, NV 89102
Telephone: (702) 438-7878
Facsimile: (702) 259-1116
Attorneys for Christopher D. Davis

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

In the matter of:

Case No.: P-15-083867-T

The BEATRICE B. DAVIS FAMILY HERITAGE
TRUST, dated July 28, 2000, as amended on
February 24, 2014.

Dept. No.: 26

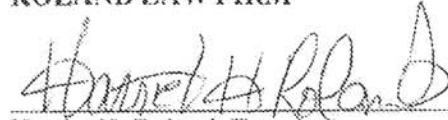
**CHRISTOPHER D. DAVIS' REPLY TO CAROLINE DAVIS' OPPOSITION TO HIS
MOTION TO DISMISS PURSUANT TO NRCP (12)(b) AND NRCP 19**

CHRISTOPHER D. DAVIS ("Christopher"), by and through his attorneys HARRIET H.
ROLAND, Esq., of the ROLAND LAW FIRM and ANTHONY L. BARNEY, Esq., of the law
office of ANTHONY L. BARNEY, LTD., and hereby submits his reply to Caroline Davis'
("Caroline") opposition to his motion to dismiss the Petition of Caroline Davis ("Caroline")

1 pursuant to Nevada Rules of Civil Procedure 12(b) and for failure to join an indispensable party
2 under NRCP 19. This pleading is based on the Memorandum of Points and Authorities attached
3 hereto, any exhibits attached hereto, and any oral argument that will be heard in this matter.
4

5 DATED this 17th day of April, 2015.

6 Respectfully Submitted,
7 **ROLAND LAW FIRM**

8 

9 Harriet H. Roland, Esq.
10 Attorney for Christopher D. Davis
11
12
13
14

15 *[remainder of page intentionally left blank]*
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 MEMORANDUM OF POINTS AND AUTHORITIES

3
4 I. FACTS PRESENTED

5 Christopher Davis hereby incorporates the Facts Presented in his Motion to Dismiss
6 Pursuant to NRCP 12(b) and NRCP 19 ("Original Motion") as if set forth fully herein. By way
7 of summary, he alleges:

8 Christopher's mother, Beatrice B. Davis ("Beatrice"), a life-long resident of Missouri,
9 created several trusts and did extensive, sophisticated estate planning after her husband Ilus W.
10 Davis died. Her long-time attorney was the Missouri firm of Lehnhardt & Lehnardt. She
11 created the Beatrice B. Davis Revocable Trust, in Missouri, on April 4, 1990, (the Revocable
12 Trust) and the Beatrice B. Davis Family Heritage Trust (the "FHT"), in Missouri, on July 28,
13 2000. She participated in the Davis Family Office, a Missouri limited liability company, formed
14 on November 3, 1999. None of these entities had any Nevada contacts until the purported
15 appointment of Dunham Trust Company on February 24, 2014.
16

17 Christopher Davis ("Christopher") and his wife Tarja are residents of Missouri. Caroline
18 Davis is a resident of Washington. (Caroline and Christopher serve as co-trustees of the
19 Revocable Trust which is administered under Missouri law, in Missouri.) Winfield Davis and
20 his son Ace Davis are residents of Japan, but citizens of the United States. Stephen Lehnardt, the
21 Trust Protector, is a resident of Missouri. Alaska Trust Company and its successor in interest,
22 Alaska USA Trust Company, do business in Alaska and, upon information and belief, have no
23 Nevada contacts. Among all the entities and assets, the only contact with Nevada is Dunham
24 Trust Company, ("Dunham") which is alleged to be currently acting as directed trustee of the
25 FHT. Even the Ashley Cooper insurance policy (the product of a tax-free exchange from the
26
27
28

1 year 2000), which is the primary asset of the trust and the subject matter of Caroline's petition,
2 is not administered in Nevada. It is administered under a custodian domiciled in Puerto Rico,
3 and its investment advisor is a Canadian broker-dealer.

4 Dunham created FHT Holdings, LLC, ("FHT Holdings") on March 28, 2014, and
5 transferred the insurance policy to it. Dunham is the 100% owner/member of FHT Holdings.
6 Christopher is the manager, and Dunham purportedly acts as "directed trustee" pursuant to the
7 purported First Amendment to the FHT dated February 24, 2014. Upon information and belief,
8 the directed trustee and LLC structure was put into place by Dunham in an attempt to shield
9 itself from the fiduciary liability inherent in holding large assets without diversification.
10

11 Christopher Davis, as manager of FHT Holdings, has no power over the Ashley Cooper
12 policy, or over the Puerto Rico custodian, or over the Canadian broker-dealer investment
13 adviser. Upon information and belief, the sole purpose of his appointment and the formation of
14 FHT Holdings, LLC, was to shield Dunham from fiduciary liability for its action or inaction.
15 Christopher receives no compensation or benefit in his position as manager of FHT Holdings.
16

17 **II. LEGAL AUTHORITY AND ARGUMENT**

18 **A. Lack of Subject Matter Jurisdiction Invalidates Nevada's Jurisdiction Due To** 19 **Absence of Conditions Precedent to Change of Situs from Alaska to Nevada.**

20 The entirety of Caroline's petition and her opposition to the motion to dismiss, and her
21 request for the Nevada court to assert jurisdiction over Christopher and the Revocable Family
22 Trust, rests defectively upon the presumed validity of the change of situs of the Beatrice B.
23 Davis Family Heritage Trust dated July 28, 2000 (the "FHT") from Alaska to Nevada,
24 purportedly accomplished by the February 24, 2014 First Amendment.
25
26
27
28

1 It is important to note that the question of the validity of the change of situs is different
2 than the question of the validity of the First Amendment. Although Caroline asserts that the
3 purported First Amendment is “presumed to be valid unless proven otherwise”, all the facts and
4 evidence prove the change of situs (a condition precedent to the amendment) was invalid and
5 not allowed under the terms of the FHT. The validity of the change of situs of the FHT (and
6 presumably the amendment purporting to accomplish it) must be determined under the express
7 mandate of Article 14, Section 6 of the FHT.
8

9 Section 6, Paragraph 1, of the FHT provides the requirements for a change of situs as:

10 Except as expressly provided herein, the situs of this agreement or any subtrust
11 established hereunder may be changed by the unanimous consent of all of the
12 beneficiaries then eligible to receive mandatory or discretionary distributions of net
13 income under this agreement or such subtrust, with the consent of any then-acting
14 Protector and the Trustee thereof, which shall be given only after Trustee has obtained
advice from counsel as to the tax and other consequences of a change in situs.¹

15 The conditions precedent to the change of situs require that all of the beneficiaries then eligible
16 to receive mandatory or discretionary distributions must consent to the change of the situs. In
17 addition, both the FHT Trust Protector and Trustee must consent to the change of situs after the
18 Trustee has been able to meet with an attorney to discuss the tax and other consequences of a
19 change in situs, and after all the current income beneficiaries of the FHT have consented. These
20 conditions did not occur. Therefore the situs of the FHT remains in Alaska until the conditions
21 are performed.
22

23 Caroline recognizes that Tarja Davis is a discretionary beneficiary of the FHT. This is
24 immediately clear by a simple review of the terms of the FHT² and by a simple review of the
25

26
27
28 ¹ See Article 14, Section 4, Page 14-7, attached as Exhibit 1 to Caroline Davis's Original Petition (emphasis added).

² See Trust, Article Three, Section 1, Page 3-1; See also Article Eight, Section 3.d., Page 8-4, See also Article 8-4.b.1-2, Pages 8-12 and 8-13 attached as Exhibit 1 to Caroline Davis' Original Petition.

1 certificate of service filed by Caroline.³ Furthermore, Caroline asserts and provides written
2 proof that Alaska USA Trust Company ("Alaska USA") resigned as Trustee on December 5,
3 2013. The resignation of Alaska USA as Trustee occurred almost three months prior to the
4 execution of the purported first amendment on February 24, 2014 and the appointment of
5 Dunham Trust Company ("Dunham") as successor Trustee.
6

7 There is no evidence that anyone or any entity assumed the office of Trustee and was in
8 authority to act and provide consent of the Trustee during the period between the resignation of
9 Alaska USA in December 2013 and the purported first amendment attempting the change of
10 situs and appointing Dunham almost three months later. In contravention of the terms of the
11 FHT, there was a purported change in situs made while there was no acting Trustee to provide
12 informed consent to the change in situs. Further, it appears everyone overlooked the necessity
13 of obtaining the consent Christopher's wife, Tarja, who was and is a beneficiary entitled to
14 discretionary distributions. Tarja did not consent to the change in situs, and her signature cannot
15 be found on any of the documents purporting to achieve the change in situs to Nevada and
16 Dunham's appointment as successor trustee.
17

18 The law of Alaska, as the situs and place of administration of the FHT before the
19 attempted change of situs, and the place of residence of Alaska USA Trust Company, the then
20 Trustee, governs the validity of the First Amendment's change of situs to Nevada, the
21 appointment of Dunham, and the other terms of the First Amendment, as well as the validity of
22 the Trust and the First Amendment itself.
23
24
25
26

27 ³ See Certification of Service for Opposition to Christopher D. Davis' Motion to Dismiss Pursuant to NRCP (12)(b)
28 and NRCP 19 dated April 13, 2015 (This correction was made by Caroline Davis after Christopher Davis filed his
Motion to Dismiss alerting the parties as to the defectiveness of both the service of process and the defective nature
of the purported first amendment).

1 Article 12, Section 3 of the FHT requires "Any proceedings to seek judicial instructions
2 or a judicial determination shall be initiated by my Trustee in the appropriate state court having
3 original jurisdiction of those matters relating to the construction and administration of trusts.
4 Because under the terms of the FHT, questions of validity must be determined under Alaska
5 law, and Alaska is the venue which has original jurisdiction of the FHT until the attempted
6 change of situs is accomplished, and an Alaska court must determine whether the change of
7 situs and the First Amendment were valid. Only then should the Nevada court take jurisdiction
8 over the FHT, and only if jurisdiction is then appropriate.
9

10
11 Alaska law allows for modification of an irrevocable trust upon consent, but by court
12 approval. AS 13.36.360 Modification or Termination of Irrevocable Trust By Consent, reads:

13 (a) Except as otherwise provided by this section, on petition by a trustee,
14 settlor, or beneficiary, a court may modify or terminate an irrevocable trust if all of the
15 beneficiaries consent and if continuation of the trust on the existing terms of the trust is
16 not necessary to further a material purpose of the trust. However, the court, in its
17 discretion, may determine that the reason for modifying or terminating the trust under
18 the circumstances outweighs the interest in accomplishing the material purposes of the
19 trust. The inclusion of a restriction on the voluntary or involuntary transfer of trust
20 interests under AS 34.40.110 may constitute a material purpose of the trust under this
21 subsection, but is not presumed to constitute a material purpose of the trust under this
22 subsection.
23
24

25 (b) Unless otherwise provided in the trust instrument, an irrevocable trust
26 may not be modified or terminated under this section while a settlor is also a
27 discretionary beneficiary of the trust.
28

1 (c) If a beneficiary other than a qualified beneficiary does not consent to a
2 modification or termination of an irrevocable trust that is proposed by the trustee, settlor,
3 or other beneficiaries, a court may approve the proposed modification or termination if
4 the court determines

5
6 (1) if all the beneficiaries had consented, the trust could have been
7 modified or terminated under this section; and

8 (2) the rights of a beneficiary who does not consent will be adequately
9 protected or not significantly impaired.

10 (d) In (c) of this section, "qualified beneficiary" means a beneficiary who

11
12 (1) on the date the beneficiary's qualification is determined, is entitled or
13 eligible to receive a distribution of trust income or principal; or

14 (2) would be entitled to receive a distribution of trust income or principal
15 if the event causing the trust's termination occurs.

16
17 It is well settled that a trust may only be modified in accordance with its specific terms.⁴

18 Where a trust instrument requires the consent of specific parties in order for an amendment to be
19 valid, the lack of consent will invalidate a purported amendment.⁵ This required consent
20 demonstrates the importance of having Alaska USA Trust Company ("Alaska USA") or their
21 successor-in-interest (and predecessor trustee) Alaska Trust Company demonstrate authority and
22 consent to change the situs of the FHT from Alaska to Nevada, because unless this evidence of
23

24
25
26 ⁴ *Dallinger v. Abel*, 199 Ill. App. 3d 1057, 1059-1060 (Ill. App. Ct. 1990) citing *Parish v. Parish* (1963), 29 Ill. 2d
141, 149, 193 N.E.2d 761, 766. (It is elementary that if the method of exercising a power of modification is
described in the trust instrument, the power can be asserted only in that manner.)

27 ⁵ *Williams v. Springfield Marine Bank*, 131 Ill. App. 3d 417, 475 N.E.2d 1122 (1985) (This rule was applied where
28 the trust instrument permitted amendment by the settlors, the appellate court holding that an attempted amendment
by only one settlor, after the other had died, was invalid.); See also Restatement (Second) of Trusts § 331,
Explanatory Notes, comment e, at 144 (1959) ("If the settlor reserves a power to modify the trust only with the

1 consent is provided, the FHT situs cannot be changed. The consents of some of the beneficiaries
2 and the FHT Trust Protector was not enough to meet the strict requirements of the condition
3 precedent (i.e. change of situs) for the purported First Amendment.

4
5 Caroline has provided no evidence of any written or even oral consent of any trustee
6 authorizing the FHT's change in situs prior to Alaska USA's resignation on December 5, 2013.
7 She has not provided any evidence of Tarja having consented to the change of situs. She has not
8 provided any evidence of the unanimous agreement of Beatrice Davis's children to appoint a
9 successor trustee in the event the Trust Protector fails to appoint a Successor Trustee within
10 thirty (30) days after Alaska USA resigned, ⁶ and even if they had, the successor trustee and
11 Tarja would have had to consent to the change of situs. Therefore, the change of situs under the
12 purported First Amendment must be presumed invalid until such evidence of an acting Trustee's
13 consent can be produced and evidence of the Trustee's and all beneficiaries' consent of the
14 change in situs can be obtained. Further and most importantly, such a dispute, which includes
15 the validity of the First Amendment, must be brought in Alaska, as the original situs of the FHT
16 before the purported First Amendment and the attempted change of situs.

17
18
19 Christopher asserts that the change of situs is invalid because of the lack of consent of all
20 beneficiaries and the absence of action by an Alaska Trustee. The determination of the validity
21 of the purported First Amendment and the change of situs (as well as its other provisions) is a
22 condition precedent to the Nevada court taking jurisdiction over the FHT. That determination
23 must be made under Alaska law before the Nevada court can assert jurisdiction over the FHT.
24 Caroline alleges that the FHT Trust Protector validly appointed Dunham as successor Trustee on
25

26
27 consent of one or more of the beneficiaries, or of the trustee, or of a third person, he cannot modify the trust without
28 such consent.").

⁶ See Trust, Article Eleven, Section 3(c), Page 11-3, attached as Exhibit 1 to Caroline Davis's Original Petition.

1 February 24, 2014, citing the second paragraph of Article 14, Section 6 as his authority to do so;
2 however as noted herein, she omitted the preceding paragraph relating to the change of situs
3 which is the condition precedent before an amendment can be authorized. Although the FHT
4 authorizes the Trust Protector and/or the beneficiaries to appoint a successor trustee in certain
5 circumstances, the change of situs could only be authorized upon consent by all beneficiaries,
6 and approval by a trustee in the original situs of Alaska
7

8 When the terms of a trust are not followed, the resulting actions based upon such
9 deviation may be invalidated.⁷ Under the terms of the FHT, discussed above, it was not
10 Dunham's consent that was required to change the situs. The timing of the purported First
11 Amendment and Dunham's consent put the cart before the horse. In order to move the situs of
12 the FHT from Alaska to Nevada or any other jurisdiction, all the beneficiaries had to consent,
13 the "then acting Trust Protector" had to consent, and the Alaska trustee had to consent only after
14 obtaining the requisite legal advice. Only then could a change in situs occur. (This is a
15 different and more demanding standard than merely changing the trustee to another Alaska
16 trustee.) Another Alaska Trustee could have been appointed, and the consent of all the
17 beneficiaries could have been obtained; then upon agreement by the Trustee, all beneficiaries,
18 and the Trust Protector, the situs could have been validly changed. However, the FHT's
19 purported First Amendment attempts to change the FHT's situs while concurrently appointing
20 Dunham as a "directed trustee". Again, Dunham's valid appointment as a Trustee, and its
21 consent to serve, could have been achieved only after the situs of the FHT was changed from
22 Alaska to Nevada. Had all of the beneficiaries consented, the decision to change the situs may
23
24
25
26

27
28 ⁷ *Northwestern University v. McLoraine*, 108 Ill. App. 3d 310, 438 N.E.2d 1369 (1982) (This rule was applied where the settlor had neglected to follow the terms of the trust which required for an amendment only that the settlor put the amendment in writing, sign it, and deliver it to the trustees during the settlor's lifetime.)

1 have found a more stable legal basis had Dunham been doing business in Alaska. But as a
2 Nevada trustee, Dunham would have had to already be in tenure as trustee, procured advice
3 from legal counsel about the tax and other consequences of moving the FHT situs, and then
4 authorized the actual change in FHT's situs from Alaska. The requisite consent of an authorized
5 Alaska trustee and all the beneficiaries does not appear in the purported First Amendment or in
6 any other document, and Caroline Davis does not provide any other evidence of a Trustee's
7 consent between December 2013 and February 2014. The condition precedent of all the
8 beneficiaries' consents and the Alaska trustee's consent was not met in order to provide
9 authority to then acting Trust Protector, Stephen Lenhardt, to change the situs of the FHT
10 without the consent of an Alaska Trustee as required by the terms of the FHT. The FHT's
11 purported First Amendment's change of situs is, therefore, invalid.

14 Establishing the validity of the FHT's purported First Amendment under NRS 164.010
15 without invoking Alaska jurisdiction is Caroline's "attempted foothold" in her urging for this
16 Court to take improper *in rem* jurisdiction over the FHT, FHT Holdings, and personal
17 jurisdiction over Dunham, but more importantly it is the defective basis upon which she urges
18 this Court to assume jurisdiction over Christopher in all his capacities within any family entity,
19 foreign or domestic, including the Revocable Trust and the Davis Family Office which are
20 residents of Missouri. Even assuming arguendo that jurisdiction is proper through the untenable
21 theory that the the First Amendment is valid, this court could only obtain jurisdiction over the
22 FHT. Thus, Caroline is more than willing to overlook the FHT's requirements for change of
23 situs and the jurisdictional prerequisites, and arrive at the erroneous conclusion that somehow
24 Christopher and Mr. Lenhardt "consented to the jurisdiction of this Court by operation of law."
25 Noticeably, Caroline cites NRS 163.5555 as authority for this statement but ignores the
26
27
28

1 requirement that the FHT be subject to the laws of Alaska, which, is clearly in dispute precisely
2 because of the invalidity of the purported First Amendment's change of the FHT's situs to
3 Nevada.

4
5 It is clear that even during the life of Beatrice B. Davis, the situs of the FHT could not be
6 changed unless her Alaska trustee had obtained an opinion of legal counsel to the effect that the
7 change in situs would not impact adversely on the spendthrift provisions of the FHT.⁸ The
8 express purpose of the FHT was to support and protect Beatrice's family for generations to
9 come, through the protection for the shares allocated to each beneficiary, so that no situation
10 would be created that could expose any of the beneficiary's shares to the claims of creditors
11 including amongst any beneficiary acting as a creditor to another.⁹ The attempted appointment
12 as Dunham as a directed trustee shedding all its liability onto Christopher clearly contravened
13 her intent.
14

15
16 Beatrice Davis, the trustmaker, was very clear that even if a power was granted to her
17 Trustee by applicable state and federal statutes, it would be strictly limited to any express
18 limitations or contrary directions in the FHT.¹⁰ Any amendment to change the situs of the FHT
19 would require the opinion of legal counsel as to its effect and be curtailed, if applicable, by the
20 terms of the FHT. This protection is implicit in the requirement that the advice of legal counsel
21 be sought by the Trustee prior to a change in situs of the FHT.¹¹ There is simply no evidence to
22 suggest that such an opinion was obtained by the Alaska Trustee prior to the purported change
23 in FHT situs.
24
25
26

27
28 ⁸ See Trust, Article Fourteen, Section 6, Page 14-7 and 14-8.

⁹ See Trust, Article 8, Section 3 (b), Page 8-3.

¹⁰ See Trust, Article Thirteen, Section 3.z, Page 13-19.

¹¹ See Trust, Article Fourteen, Section 6, Page 14-7 and 14-8.

1 Because of the lack of evidence of the required consent by the Alaska trustee and all the
2 beneficiaries, and because the Alaska trustees initiated and completed all the transactions for
3 which Caroline is demanding an account, the presence of the predecessor Alaska trustees acting
4 prior to February 24, 2014 (the date of the purported First Amendment) is indispensable to this
5 matter, in order to determine the validity and consent issues discussed herein. Without the
6 indispensable party(ies) being joined, including Alaska Trust, the predecessor trustee and
7 successor in interest of Alaska USA, and/or another Alaskan successor after December 5, 2013,
8 the matter cannot properly adjudicated.
9

10
11 **B. Indispensible Parties to this Action and Caroline's Failure to Provide Notice or**
12 **Service**

13 Caroline alleges that "During their tenure as Trustee, both Alaska¹² and Alaska USA
14 distributed approximately \$2,164,744.68, from loans taken against the Ashley Cooper Life
15 Insurance Policy, to Chrstioher individually, and as a co-trustee with Caroline of the Beatrice B.
16 Davis Revocable Living Trust, dated April 4, 1990, as amended (the "Revocable Trust"), and as
17 Manager of the Davis Family Office, a Missouri limited liability company (the "Davis Office").
18 Caroline apparently believes that the Alaska trustees which allegedly procured more than two
19 million dollars in policy loans from Ashley Cooper Life Insurance Policy for various FHT
20 purposes, including making loans to Beatrice and paying their own fees, are not indispensable
21 parties, simply because she alleges that, Mr. Davis, in his individual capacity, and in capacity as
22 Trustee of the Revocable Trust, and as Manager of the Davis Office, was the only individual to
23
24
25
26
27
28

¹² Alaska Trust Company was the predecessor trustee of the Beatrice B. Davis Family Heritage Trust dated July 28, 2000 prior to Alaska USA Trust Company.

1 receive distributions as a result of such loans and the only one privy to the information sought
2 by Ms. Davis,..."¹³ Her allegation is misplaced.

3 Caroline apparently believes that neither Beatrice, nor the Alaska trustees, nor any other
4 entity, were the recipients of any of the FHT funds borrowed, distributed, or otherwise disbursed
5 from the Ashley Cooper Life Insurance Policy, which based upon the administration expenses
6 by Alaska and/or Alaska USA or the Trust Protector is improbable at best. Under Alaska law
7 and almost every other jurisdiction in the United States, a trustee is entitled to fees, and the
8 mandate of an accounting for trust assets is directed to the trustee that actually administered the
9 trust funds or assets, not to a beneficiary or other creditor or debtor of the trust.¹⁴ In this case,
10 those trustees required to account would be Alaska Trust and Alaska USA (now merged into
11 Alaska USA) and they are the only ones who could account for these transactions, and whether
12 or not they received any of those funds including but not limited to their administration costs or
13 other investment expenses, as well as for what purposes the loans, distributions, or
14 disbursements were made. Because only they would have such information, they are a
15 necessary and indispensable party. Caroline's request would greatly prejudice and unduly
16 burden Christopher to attempt secure information from and in the possession of the prior
17 trustees in Alaska for documentation that Caroline desires through a proceeding in Nevada,
18 during the time that she had co-equal status with him as a beneficiary. Alaska and/or Alaska
19 USA would be the proper parties from whom to request her desired information.

20 Notably, Caroline alleges that Dunham Trust Company is an indispensable party, having
21 allegedly received a mere \$25,000 of the total amount of policy loans (presumably for its fees
22 and expenses) while Alaska and Alaska USA are not indispensable parties after having
23

24
25
26
27
28

¹³ See Opposition at 7:20-22.

1 allegedly received and distributed \$2,164,744.68 as well as allegedly transferring all the assets
2 of the FHT to Dunham. Interestingly, the information Caroline Davis is requesting would be in
3 the possession of the two Alaska trustees that she claims are not indispensable, which is an
4 unreasonable argument. It is unclear if Caroline even bothered to request an accounting from
5 either Alaska Trust or Alaska USA concerning their alleged receipt and distribution of
6 \$2,164,744.68, or from Dunham regarding the \$25,000 that was allegedly loaned during
7 Dunham Trust Company's alleged trusteeship before rushing to this court for a remedy. As a
8 beneficiary, she could have easily requested this information from these trustees without filing
9 the present court action.
10
11

12 Because of her rush to court without apparently requesting these documents from the
13 trustees, Caroline now attempts twice to indicate that she is "not now objecting to the loans and
14 distributions being made or claiming any breach of fiduciary duty..." or she "is not now
15 claiming any willful misconduct or gross negligence by Alaska or Alaska USA."¹⁵ However,
16 she has asked this court to assume jurisdiction over the Nevada trustee, the FHT, the Trust
17 Protector and trust adviser, and if she succeeds, she will file any future action in this same
18 Nevada case. Therefore, her allegation that "Alaska and Alaska USA have no interest in the
19 outcome of the relief being sought by Ms. Davis in her Petition" is incorrect. Alaska and Alaska
20 USA would have every interest in the outcome of this action because they were trustees of the
21 Trust who made the trust loans which are the subject of Caroline's concerns, and over which she
22 has asked this Court to exercise *in rem* jurisdiction. Furthermore, they were trustees for the time
23 periods in which Caroline seeks all information and, therefore, logically any information and/or
24 claims arising from the information in Alaska and Alaska USA's possession is relevant to them.
25
26
27
28

¹⁵ See Alaska Statute 13.36.080; See also NRS 164.015 and NRS 153.031(1)(h).

1 Relying on the purported validity of the First Amendment to the FHT, Caroline comes to
2 the misleading conclusion that, "[because] Dunham Trust lacked the authority to act, the transfer
3 of the Ashley Cooper Life Insurance Policy must have been done at the direction of Mr. Davis,
4 as Investment Trust Advisor." Noticeably, Caroline removes any reference to the Alaska or
5 Alaska USA Trustees who would have the information or approved any alleged transfers and
6 have the information pertaining thereto. Caroline freely omits information to wrongfully obtain
7 the information she seeks. She further ignores that the manager of an LLC wholly owned by
8 the Trustee who is a beneficiary of the trust would not have the authority to transfer the policy
9 to itself. Caroline leaps to her finger-pointing apparently without bothering to request the
10 transfer documents either from Dunham or the Puerto Rico custodian.
11

12 Caroline is simply attempting to gain access to records that she could request from the
13 parties that she claims are not indispensable, and to delve into Christopher's personal affairs.
14 She has asked for an accounting from him as to the use of all the loan proceeds, disbursements
15 or distributions from the FHT, without regard to the entity or person who in fact was the
16 borrower or recipient. It is a question for the Alaska trustee as to whether the loans or
17 distributions were made in accordance with the provisions of the FHT. With 20/20 hindsight,
18 Caroline may regret that she did not borrow funds, request distributions, or demand an
19 accounting from the Alaska trustees while she was able to do so. Now she is asking this Court
20 to turn a blind eye and "look beyond"¹⁵ her failure to even make any appropriate request on the
21 proper parties or serve the proper parties that would have the information that she is seeking.
22 Christopher respectfully requests that this Court grant his motion to dismiss and deny Caroline's
23 claims in their entirety.
24
25
26
27
28

¹⁵ See Page 7, lines 24-25 and Page 8, lines 17-18 of Caroline Davis's Objection.

1 **C. Individual Parties or Entities Were Not Properly Served for the Court to Exercise**
2 **Jurisdiction, and FHT Holdings' Corporate Form May Not Be Disregarded**

3 In an effort to buttress her argument regarding their lack of proper service upon FHT
4 Holdings, LLC, Caroline cites to inapplicable case law from Surrogate's Court of New York,
5 New York County, which does not address the necessity of providing proper service to a
6 corporation. In similar fashion to her omission of the language of the FHT as it related to the
7 condition precedent to any future amendment, she even withheld the pertinent language for the
8 cited case which actually held that, "It is sometimes said that where an estate or trust owns all or
9 substantially all of the shares of a corporation, the corporate form may be disregarded and the
10 situation viewed just as if the fiduciaries held title to the corporate assets. This would appear to
11 be an oversimplification of the matter. It is not so much a matter of disregarding the corporate
12 form, but rather of giving paramount consideration to the testamentary plan and scheme, and
13 effectuating it in the manner prescribed by the testator. (citation omitted) Sometimes, due
14 consideration of the testamentary plan demands that the corporate form be respected. This is
15 particularly true where the testator directed the formation of a corporation or the continuance of
16 one formed during his lifetime. (citation omitted).¹⁷

17 Under the facts of this case, Beatrice, as Trustmaker, did not form FHT Holdings, LLC,
18 and did not specify that FHT Holdings be given consideration as part of her testamentary plan
19 and scheme. Based upon the definition of the case cited by Caroline, she is attempting to
20 oversimplify this matter, which cannot be done with regard to the facts presented in this matter.
21
22
23
24
25
26
27

28 ¹⁶ Petition at 7:5-6.

¹⁷ In the Matter of Schnur, 39 Misc. 2d 880, 887, 242 N.Y.S.2d, at 132 (1963).

1 Furthermore, in *Swensen v. Sheppard*, our Nevada Supreme Court recognized that NRS
2 164.010(1) and NRS 164.015(6) do not give the court jurisdiction to impose personal
3 judgments.¹⁸ Likewise, it found that it could not impose personal liability on individuals or
4 entities which "required the court to acquire 'personal jurisdiction over [them as] part[ies],
5 normally through appropriate process based on contacts with the jurisdiction or through [their]
6 general appearance therein to defend on the merits.'"¹⁹

7
8 In her Opposition, however, Caroline attempts to request this court take exception to the
9 requirements for proper service and notice, which is entirely improper. Caroline is attempting
10 to use the relaxed standards of statutory *in rem* jurisdiction for the more stringent requirements
11 necessary to obtain the necessary personal jurisdiction over Christopher Davis, individually or
12 upon FHT Holdings, LLC. Again, this is improper and contrary to due process requirements.
13 Proper notice and service are required for personal jurisdiction over a party especially when
14 requesting the court to exercise power and authority over an individual party or upon a business
15 entity.
16
17

18 Furthermore, when assets are transferred with proper authority to a business entity, then
19 the property becomes part of the business entity and not the trust.²⁰ Thus, a district court's *in*
20 *rem* jurisdiction under NRS 164.010(1) and NRS 164.015(6) over the trust assets do not extend
21 to assets transferred from the trust to a business entity or to a third party from that business
22 entity.²¹ Therefore, even if the Court were to obtain jurisdiction over the insurance policy
23 administered by a Puerto Rico insurer with the advice of the Canadian broker-dealer investment
24
25

26
27 ¹⁸ *Swensen v. Sheppard (In re Aboud)*, 314 P.3d 941, 946 (Nev. 2013)

28 ¹⁹ *Id.*, citing Restatement (Second) of Judgments § 30(2) cmt. c; see *Young v. Nev. Title Co.*, 103 Nev. 436, 442, 744 P.2d 902, 905 (1987) ("A court does not have jurisdiction to enter judgment for or against one who is not a party to the action.")

²⁰ *Swensen v. Sheppard (In re Aboud)*, 314 P.3d 941, 945-946 (Nev. 2013)

²¹ *Id.*

1 advisor, Caroline would also have to seek personal jurisdiction over Christopher, individually,
2 or FHT Holdings, LLC to obtain any relief she seeks. She did not do so.

3
4 Therefore, the due process rights of the entities must be respected, and service properly
5 administered in order to obtain jurisdiction over Christopher, individually, and FHT Holdings,
6 LLC. Therefore, Caroline's Original Petition should be dismissed.

7 **D. Additional Indispensable Parties Named in Opposition Were Not Served; therefore,**
8 **Jurisdiction is Improper over Them.**

9
10 Caroline admittedly did not include additional parties in her Original Petition that she
11 now alleges were recipients of FHT funds and loans from the insurance policy. Caroline alleges
12 that, "During their tenure as Trustee, both Alaska and Alaska USA distributed approximately
13 \$2,164,744.68, from loans taken against the Ashley Cooper Life Insurance Policy, to Mr. Davis
14 individually, as co-Trustee (with her) of the Beatrice B. Davis Revocable Living Trust, dated
15 April 4, 1990, as amended (the "Revocable Trust"), and as Manager of the Davis Family Office,
16 a Missouri limited liability company (the "Davis Office"). In order to allegedly distribute loans,
17 Alaska and Alaska USA must have been recipients of FHT funds. In order to make a loan of
18 FHT funds to Alaska and Alaska, the custodian of the Ashley Cooper Life Insurance Policy
19 must have been in receipt of FHT funds. If, as alleged, FHT funds were received by
20 Christopher, the Revocable Trust, and the Davis Family Office from Alaska and Alaska USA,
21 all three would have been recipients of those funds. Of the prior six alleged recipients, none of
22 them was afforded proper notice or service in this matter. Therefore, this court lacks
23 jurisdiction over these parties. Particularly, Nevada law does not allow for this Court to take
24 jurisdiction over the Revocable Trust and the Davis Family Office, which are Missouri entities,
25
26
27
28

1 without examining the requirements necessary for jurisdiction over foreign entities holding only
2 personal property.

3 Caroline, in effect, argues 1) the entity authorized to make the policy loan is not an
4 indispensable party, 2) that the party making the loans or distributions does not even need to be
5 noticed or served concerning the policy loans, 3) the only individual alleged as a recipient does
6 not need to be served pursuant to NRCP 4; and 4) that notice or service either under NRCP 4 or
7 NRS 155.010 does not need to be provided to the remaining alleged distributees and recipients
8 of FHT funds. These four arguments violate all constitutionally protected due process rights
9 and related laws existent in Nevada, and likely every other jurisdiction in the United States.
10 Proper parties should be included in lawsuits affecting their rights or responsibilities and proper
11 personal and subject matter jurisdiction should be obtained over all parties in such lawsuits.
12

13
14 Caroline admittedly understands the importance of obtaining *in rem* jurisdiction over a
15 trustee of a trust pursuant to NRS 164.010, because she asks this Court to assume jurisdiction of
16 the FHT pursuant to this statutory authority. Notwithstanding this admission, she seeks
17 jurisdiction over Christopher Davis, individually, as trustee of the Revocable Trust, and as
18 manager of FHT Holdings without even bothering to serve notice under NRS 155.010 or
19 pursuant to NRCP 4. Furthermore, Caroline failed to serve the custodian of the Ashley Cooper
20 Life Insurance Policy of which she claims provided the loans to the FHT.
21

22
23 Admittedly, all of these parties were admittedly never even served by Caroline, and
24 therefore her Petition must be dismissed for lack of proper jurisdiction over these parties.

25 Notice and service of process were never given to these parties, and the Court is without
26 jurisdiction over them. Therefore, Caroline's claims in her Original Petition must be dismissed.
27
28

1 **E. The Alaska Trustees are Indispensible Parties and Meet NRCP 19 Requirements;**
2 **therefore, without a Joinder of these Parties, this Matter Must be Dismissed.**

3 In Reply to the NRCP 19 factors discussed by Caroline in her Opposition, it is evident
4 that Caroline belies her own statements. Caroline indicates on the one hand that Alaska and
5 Alaska USA would not be "placed in a position in which they would need to protect any
6 interest"²² while on the other indicating that Caroline is "not now claiming any willful
7 misconduct or gross negligence by Alaska or Alaska USA" suggesting that when she obtains
8 any of Alaska or Alaska USA documents that possible claims are likely to follow.²³ Alaska or
9 Alaska USA must be allowed to defend themselves if necessary or protect themselves from
10 liability in the accuracy of information that may be provided during their tenure as Trustees of
11 the FHT to avoid claims of willful misconduct or gross negligence by Caroline.
12

13 Furthermore, Christopher will be subjected to double or multiple or otherwise
14 inconsistent obligations in possibly many jurisdictions as a result of Caroline's claims without
15 the necessary parties, Alaska and Alaska USA, joined to the present matter. Caroline seems to
16 ignore the fact that she has now named multiple Defendants in this matter whose interests must
17 all be considered, especially in light of the fact that proper service has not been effectuated on
18 them for an order or judgment to be rendered against them in this matter.
19

20 Curiously, Caroline then requests the Court to seek relief from Christopher individually
21 if the Court does find that Alaska and Alaska USA are indispensable parties. She wrongfully
22 asks the court to order Christopher to provide the documents that are in Alaska and Alaska
23 USA's possession without gaining proper jurisdiction over him individually. She wrongfully
24 alleges that such a request would allegedly not be prejudicial to Christopher and allegedly
25
26
27
28

²² See Caroline's Opposition, Page 8, lines 21-22.

1 would be an adequate remedy, although the requested documents would be in the Trustee's
2 possession.

3 She also falsely alleges that Alaska cannot allegedly assume jurisdiction over
4 Christopher, erroneously citing NRCP 19(b) for this proposition.²⁴ With proper service to
5 Christopher, Caroline could obtain jurisdiction over Christopher in Alaska if Alaska has
6 jurisdiction over the FHT.²⁵

7
8 Joinder of Alaska and Alaska USA, Inc., is necessary as previously explained in
9 Christopher's Original Motion to Dismiss and herein. If their joinder is not feasible, then this
10 matter must be dismissed, because they are necessary and indispensable parties to this matter.
11

12 **III. CONCLUSION**

13 For the foregoing reasons, Christopher respectfully requests the Court do the following,

- 14 1. Deny Caroline's Original Petition in its entirety;
- 15 2. Deny Caroline's Opposition in its entirety; and
- 16 3. Grant the relief requested in Christopher's Original Motion to Dismiss and all further
17 requests made in his Reply to Caroline's Opposition to his Original Motion to Dismiss;
- 18 4. Deny jurisdiction over the FHT Trust as a proceeding *in rem* until an Alaska court
19 determines the validity of the change in situs, and/or the First Amendment;
20
21

22
23 ²³ See Caroline's Opposition, Page 8, lines 17-18 (emphasis added).

24 ²⁴ See Caroline's Opposition, Page 9, lines 14-15 and fn 24.

25 ²⁵ See AS 13.36.375. Trustee Advisor: (a) A trust instrument may provide for the appointment of a person to act as
26 an advisor to the trustee with regard to all or some of the matters relating to the property of the trust. (b) Unless the
27 terms of the trust instrument provide otherwise, if an advisor is appointed under (a) of this section, the property and
28 management of the trust and the exercise of all powers and discretionary acts exercisable by the trustee remain
vested in the trustee as fully and effectively as if an advisor were not appointed, the trustee is not required to follow
the advice of the advisor, and the advisor is not liable as or considered to be a trustee of the trust or a fiduciary
when acting as an advisor to the trust.; See also AS 13.36.035 (a) The court has exclusive jurisdiction of
proceedings initiated by interested parties concerning the internal affairs of trusts, including trusts covered by (c) of
this section. Except as provided in (c) and (d) of this section, proceedings that may be maintained under this section
are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of
other matters involving trustees and beneficiaries of trusts.

- 1 5. Deny jurisdiction over the Revocable Trust and the Davis Family office;
2 6. Deny jurisdiction over Christopher Davis personally;

3 DATED this 17th day of April, 2015.
4

5 Respectfully Submitted,
6 ROLAND LAW FIRM

7 
8 _____
9 Harriet H. Roland, Esq.

10 NV Bar No. 5471

11 2470 E. St. Rose Pkwy, Ste. 105

12 Henderson, NV 89074

13 Telephone: (702) 452-1500

14 Facsimile: (702) 920-8903

15 hroland@rolandlawfirm.com

16 *Attorney for Christopher D. Davis*
17
18
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Anthony L. Barney, Ltd., and not a party to this action.
3 I further certify that except as otherwise noted on April 20, 2015, I served the foregoing
4 CHRISTOPHER D. DAVIS' REPLY TO CAROLINE DAVIS' OPPOSITION TO HIS
5 MOTION TO DISMISS PURSUANT TO NRCP (12)(b) AND NRCP 19 by first class US
6 mail, postage prepaid, upon the following persons or entities:

7 Tarja Davis
8 514 West 26th Street, #3E
9 Kansas City, Missouri 64108

10 Ace Davis
11 c/o Winfield B. Davis
12 366-6 Habu Aridagawa Arida
13 Wakayama 643-0025
14 JAPAN

15 Christopher D. Davis
16 514 West 26th Street, #3E
17 Kansas City, Missouri 64108

18 Registered Agent Solutions, Inc.
19 Registered Agent for FHT Holdings, LLC, a Nevada Limited Liability Company
20 4625 West Nevso Drive, Suite 2
21 Las Vegas, Nevada 89103

22 Stephen Lehnardt
23 20 Westwoods Drive
24 Liberty, Missouri 64068
25 Stephen@lehnardt.com

26 Winfield B. Davis
27 366-6 Habu Aridagawa Arida
28 Wakayama 643-0025
JAPAN

29 Mark Solomon, Esq.
30 Joshua Hood, Esq.
31 **SOLOMON DWIGGINS & FREER, LTD.**
32 9060 W. Cheyenne Ave.
33 Las Vegas, NV 89129
34 *Attorney for Petitioner Caroline Davis*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Charlene Renwick, Esq.
Lee, Hernandez, Landrum & Garofalo
7575 Vegas Drive, #150
Las Vegas, Nevada 89128
Attorney for Dunham Trust Company



Employee of Anthony L. Barney, Ltd.



EXHIBIT 7


CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

)
IN THE MATTER OF THE TRUST OF:) CASE NO. P-15-082867
)
THE BEATRICE DAVIS HERITAGE) DEPT. NO. XXVI
TRUST.)
) **Transcript of Proceedings**

BEFORE THE HONORABLE GLORIA J. STURMAN, DISTRICT COURT JUDGE

**MOTION TO DISMISS: MOTION ON CHRISTOPHER DAVIS' MOTION TO
DISMISS PURSUANT TO NRCP 12(B) AND NRCP 19; PETITION TO
ASSUME JURISDICTION OVER THE BEATRICE B. DAVIS FAMILY
TRUST, ASSUME JURISDICTION OVER CHRISTOPHER DAVID AS
INVESTMENT TRUST ADVISOR AND STEPHEN K. LEHNARDT AS
DISTRIBUTION TRUST ADVISOR, TO CONFIRM DUNHAM TRUST COMPANY
AS DIRECTED TRUSTEE, AND FOR IMMEDIATE DISCLOSURE OF
DOCUMENTS AND INFORMATION FROM CHRISTOPHER D. DAVIS**

WEDNESDAY, APRIL 22, 2015

APPEARANCES:

For Caroline Davis: MARK ALAN SOLOMON, ESQ.
JOSHUA M. HOOD, ESQ.
For Christopher Davis: ANTHONY L. BARNEY, ESQ.
For Stephen Lehnardt: JONATHAN W. BARLOW, ESQ.
For Dunham Trust Company: CHARLENE N. RENWICK, ESQ.

RECORDED BY: KERRY ESPARZA, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 WEDNESDAY, APRIL 22, 2015 AT 10:09 A.M.

2

3 THE COURT: Okay. Will everybody state
4 appearances and we're ready to go?

5 MR. BARLOW: Jonathan Barlow for Stephen Lehnardt,
6 the Trust Protector.

7 THE COURT: Okay.

8 MS. RENWICK: Charlene Renwick on behalf of
9 Dunham Trust Company.

10 MR. BARNEY: Anthony Barney on behalf of
11 Christopher Davis.

12 THE COURT: All right.

13 MR. SOLOMON: And Mark Solomon and Joshua Hood on
14 behalf of Caroline Davis.

15 THE COURT: Okay. So, this is, again, my day to
16 deal with these family issues. So, anyway, let's discuss.
17 This is -- Mr. Solomon, your Petition to Assume
18 Jurisdiction over the Trust. I didn't really see that that
19 issue, the assuming that jurisdiction over the trust, was
20 really opposed. So to that specific relief requested, is
21 anybody really opposing that?

22 MR. BARNEY: Yes. I filed a Motion to Dismiss --

23 THE COURT: Okay.

24 MR. BARNEY: -- his Petition in that regard.

25 THE COURT: Okay. All right. But I thought that

1 was -- just to dismiss the petition or just to dismiss your
2 client or to dismiss the petition?

3 MR. BARNEY: Dismiss the --

4 THE COURT: Okay. It was Mr. Barlow who was just
5 looking -- who did his Joinder the right way. Nobody ever
6 does Joinders the right way. He --

7 MR. BARLOW: Well, thank you.

8 THE COURT: He made it really clear: I'm only
9 joining -- people always just file joinders and I'm like:
10 What are you joining? He made it real clear what he's
11 joining. He is joining only to the extent that --

12 MR. BARLOW: Right. We turned in Mr. Barney's
13 arguments --

14 THE COURT: Right.

15 MR. BARLOW: -- related to the jurisdiction and --

16 THE COURT: Jurisdiction only.

17 MR. BARLOW: -- the -- limited to the --

18 THE COURT: Okay.

19 MR. BARLOW: -- joinder parties. There was a
20 concern that we had that we didn't join and subsequent
21 conversations after review of the Reply that we may have
22 changed our position on that.

23 THE COURT: Okay.

24 MR. BARLOW: So, essentially, we're all
25 essentially in full joinder with the --

1 THE COURT: Okay. So you're --
2 MR. BARLOW: -- Motion now after reviewing --
3 THE COURT: All right. So then --
4 MR. BARLOW: -- the Reply.
5 THE COURT: -- what's your client's position on --
6 any other --
7 MR. SOLOMON: Yeah, we did file a Reply, Your
8 Honor.
9 THE COURT: Okay.
10 MR. SOLOMON: You mean to Mr. Barlow?
11 THE COURT: Yeah. Okay.
12 MR. SOLOMON: Yeah, our position is that we
13 properly, under our statute, asked the Court to confirm him
14 as Trust Protector and Distribution Advisor because that's
15 what our law requires.
16 THE COURT: Okay. So, --
17 MR. SOLOMON: How do you want to tackle this, Your
18 Honor?
19 THE COURT: I think -- that's why -- I think,
20 first of all, can we just make it clear who is on first?
21 So, --
22 MR. SOLOMON: It's my petition but they never
23 really responded to my petition --
24 THE COURT: Right. So, --
25 MR. SOLOMON: -- substantively.

1 THE COURT: -- the interests --

2 MR. SOLOMON: What they did was just took this
3 jurisdictional --

4 THE COURT: Right.

5 MR. SOLOMON: -- Motion to Dismiss --

6 THE COURT: That was why I was wondering because -
7 -

8 MR. SOLOMON: -- which I don't -- I opposed
9 specifically --

10 THE COURT: I know. It seemed like nobody was
11 really -- it didn't -- it had gotten to this jurisdictional
12 issue, we didn't really get to the issue of, you know, does
13 this Court have -- can this Court, you know, assume
14 jurisdiction?

15 MR. BARNEY: And, Your Honor, therein lies the
16 Motion to Dismiss. If the Motion to Dismiss is determined
17 on its merits, --

18 THE COURT: So --

19 MR. BARNEY: -- this Court does not have
20 jurisdiction to --

21 THE COURT: -- I guess that's my question is --

22 MR. SOLOMON: We only accept jurisdiction to
23 determine jurisdiction, obviously. So, --

24 THE COURT: Right.

25 MR. SOLOMON: -- that's where I think we are, Your

1 Honor.

2 THE COURT: So, yeah. And -- okay. So I guess
3 that's the question then is: Does it make more sense to
4 start with the Petition to Dismiss --

5 MR. SOLOMON: I think so, yes.

6 THE COURT: -- and make the decision with respect
7 to jurisdiction --

8 MR. SOLOMON: And I can cover both in my response
9 --

10 THE COURT: Okay.

11 MR. SOLOMON: -- because --

12 THE COURT: Perfect.

13 MR. SOLOMON: -- they're relevant.

14 THE COURT: Then excellent. And I don't know, Mr.
15 Barney, who is arguing -- okay. Good. Thanks.

16 MR. BARNEY: Thank you, Your Honor.

17 Your Honor, as you are aware, the issue of
18 jurisdiction arises or fails under the issue of whether or
19 not there is a valid amendment to the trust. The terms of
20 the trust specifically indicate that in order to create an
21 amendment there must be a change in situs that is
22 effectively ratified as a condition precedent to any
23 amendment amending the trust to the laws of the state of
24 Nevada.

25 Under the terms of the trust, the change in situs

1 is required only after the consent of all of the
2 beneficiaries. The then acting Protector and the consent
3 of the Trustee after it has received its counsel during the
4 life of the testator a written opinion and thereafter an
5 opinion by counsel that a change in situs is proper.

6 In this case, in order for there to be a first
7 amendment, to even give the Court jurisdiction on the basis
8 upon which to take jurisdiction under 164.010, there had to
9 be a proper change in situs and there didn't occur a proper
10 of situs in this case. There are certain beneficiaries of
11 this trust. We have Christopher Davis, we have Caroline
12 Davis, we have their son, and we also have Taria [phonetic]
13 Davis. Okay. The amendment would have required all of
14 their consents to --

15 THE COURT: But it said it was unanimous.

16 MR. BARNEY: It was unanimous.

17 THE COURT: Oh.

18 MR. BARNEY: And the trust, Your Honor, doesn't
19 require unanimous consent, it requires all beneficiaries.
20 That's the pertinent part of the trust and that's set forth
21 under Article 14. All beneficiaries must consent to this.

22 As far as we know --

23 MR. SOLOMON: Who didn't consent?

24 MR. BARNEY: Taria [phonetic].

25 MR. SOLOMON: Who is that?

1 MR. BARNEY: Taria [phonetic] is the wife of
2 Christopher Davis.

3 THE COURT: Okay.

4 MR. SOLOMON: Not at the time of this.

5 THE COURT: Okay. All right.

6 MR. BARNEY: Yes. And, in fact, it's clear that
7 they understood she was a beneficiary because in their
8 Opposition to our Motion to Dismiss, they actually notice -
9 - they took to notice her, okay, but they hadn't previously
10 done so. Okay. It's clear that she did not consent to
11 this.

12 There also wasn't an acting Alaska Trustee at that
13 point to consent to the transfer. Mr. Solomon presented
14 evidence that was very clear that on December 5th that
15 Alaska Trust USA tendered their resignation and was no
16 longer the Trustee at that point. Then, allegedly, in
17 February, the first amendment was produced wherein the
18 change in situs occurred, allegedly, and a new Trustee was
19 appointed in that same document.

20 Now, Your Honor, that begs the question: How
21 could a Nevada Trustee based in Nevada who could only
22 operate within that situs be the Trustee that referred to
23 in the trust but had to receive counsel before they made
24 the change in situs that would also make the amendment
25 operative as a condition precedent and then go ahead and